American Bar Association Journal

JUNE 1955 • Volume 41 • Number 6

This Month's Cover

There is no need to refresh the memories of JOURNAL readers on Thomas Jefferson (1743-1826), "author of the Declaration of American Independence, of the statute of Virginia for religious freedom, and father of the University of Virginia". The contributions of the Third President to the ideal of freedom under the law are immeasurable. The line drawing of Jefferson is by our artist, Charles W. Moser, of Chicago.

June, 1955

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The President's Page

Loyd Wright

▪ The American Bar Association has completed its first motion picture devoted to portraying the activities of the organized Bar in America. It is an unusual documentary film designed to interest lawyers throughout the country in the work of the organized Bar. It is now ready for distribution through state and local bar associations, and it is our hope that all of the splendid work of the Public Relations Department who conceived and executed the piece will be fully utilized.

In this busy life of ours everyone officially connected with any bar association realizes, I am sure, how difficult it is to make even lawyers aware of the scope of bar association activities and how important it is to the profession as a whole, as well as to the individual lawyer, that our bar associations be strong, fearless and articulate. The motion picture, *A Dedication to Justice*, is intended to tell the basic story and to reach a national audience far greater than could be accomplished in any other way.

In addition to reminding lawyers why it is in their own interest to support actively the work of the bar associations at the national level, as well as at the state and local level, it is intended to acquaint laymen with many of the activities that lawyers perform both individually and through their associations in the public interest.

The picture opens with scenes of the dedication of the American Bar Center. If you were there, you will enjoy seeing yourself portrayed in the picture; if you were not, you will enjoy seeing some of your brother workers in the role of "actor".

After showing a bit of the dedication ceremonies, the picture proceeds through a fast-moving series of interviews with judges and lawyers from all parts of the country, who discuss current bar activities in their relation to practicing lawyers and the public. These interviews amount to a reappraisal of the work of the organized Bar in today's society. The interview style is an adaptation of the television news interview technique through which a moderator brings to the TV screen the images and voices of his subjects from distant points. In the case of our picture, the moderator is the widely known CBS Washington news analyst, Eric Sevareid.

The professionally distinguished "cast" includes lawyers not only truly representative of the legal profession, but well known to most of the lawyers of the country. The Chief Justice of the United States is shown speaking at the Bar Center dedication in the University of Chicago's Rockefeller Chapel. Others who appear on the screen are former President of the Association William J. Jameson, of Montana, Judge Harold R. Medina, of New York, Dean E. Blythe Stason of the University of Michigan Law School, Robert B. Troutman, of Georgia, Cecil Burney, of Texas, Richard H. Bowerman, of Connecticut, and Mrs. Edward Cumpston, of Rochester, New York, the latter a nonlawyer who discusses legal aid and lawyer referral programs of the Bar.

In the first phase of the film's distribution it will be made available to bar associations, state and local, for showings to lawyer audiences. Details of the plan for distribution will be in the hands of bar association presidents and secretaries in all parts of the country, either by the time this page appears in print or within a few days thereafter.

Here is a tool that bar officials everywhere can employ to stimulate and to inspire increased lawyer support of bar association work.

While we are anxious that the picture be shown primarily to lawyers, many bar associations will undoubtedly wish to arrange for its presentation to clubs and civic groups.

The motion picture, produced under the supervision of the Association's Committee on Public Relations, is another example of the efforts of the American Bar Association to coordinate the work of the Bar and to improve the public's understanding of the profession and its aims.

(Continued on page 506)

American Bar Association Journal

the official organ of the

AMERICAN BAR ASSOCIATION

published monthly

The objects of the American Bar Association, a voluntary association of lawyers of the United States, are to uphold and defend the Constitution of the United States and maintain representative government; to advance the science of jurisprudence; to promote the administration of justice and the uniformity of legislation and of judicial decisions throughout the nation; to uphold the honor of the profession of law; to apply its knowledge and experience in the field of the law to the promotion of the public good; to encourage cordial intercourse among the members of the American Bar; and to correlate and promote such activities of the Bar organizations in the nation and in the respective states as are within these objects, in the interest of the legal profession and of the public. Through representation of state, territory and local bar associations in the House of Delegates of the Association, as well as large membership from the Bar of each state and territory, the Association endeavors to reflect, so far as possible, the objectives of the organized Bar of the United States.

There are seventeen Sections for carrying on the work of the Association, each within the jurisdiction defined by its by-laws, as follows: Administrative Law; Antitrust Law; Bar Activities; Corporation, Banking and Business Law; Criminal Law; Insurance Law; International and Comparative Law; Judicial Administration; Labor Relations Law; Legal Education and Admissions to the Bar; Mineral Law; Municipal Law; Patent, Trade-Mark and Copyright Law; Public Utility Law; Real Property, Probate and Trust Law; Taxation; and the Junior Bar Conference. Some issue special publications in their respective fields. Membership in the Junior Bar Conference is limited to members of the Association under the age of 36, who are automatically enrolled therein upon their election to membership in the Association. All members of the Association are eligible for membership in any of the other Sections.

Any person who is a member in good standing of the Bar of any state or territory of the United States, or of any of the territorial groups, or of any federal, state or territorial court of record, is eligible to membership in the Association on endorsement, nomination and election. Applications for membership require the endorsement of a member of the Association in good standing and are considered in each case by a Committee on Admissions of the appropriate state. If the applicant is a member of the Bar of the state or territory in which he resides or has his principal office, or is a member of a federal, state or territorial court of record of a state or territory in which he resides or has his principal office, the application is referred to the Committee on Admissions for one of such states or territories. If, however, the applicant is not a member of the Bar of the state or territory in which he resides or has his principal office, the application is referred to the Committee on Admissions for one of those states or territories or is referred to the Committee on Admissions for a state or territory in which the applicant formerly resided and to the Bar of which he was admitted. Upon the approval of an application by a majority of the proper Committee on Admissions, an applicant is deemed nominated for membership. All nominations made pursuant to these provisions are reported to the Board of Governors for election. Four negative votes in the Board of Governors prevent an applicant's election.

Dues are $16.00 a year, except for the first two years after an applicant's admission to the Bar, the dues are $4.00 per year, and for three years thereafter $8.00 per year, each of which includes the subscription price of the JOURNAL. There are no additional dues for membership in the Junior Bar Conference. Dues for the other Sections are as follows: Administrative Law, $5.00; Antitrust Law, $5.00; Bar Activities, $2.00; Corporation, Banking and Business Law, $3.00; Criminal Law, $2.00; Insurance Law, $5.00; International and Comparative Law, $3.00; Judicial Administration, $3.00; Labor Relations Law, $6.00; Mineral Law, $5.00; Municipal Law, $3.00; Patent, Trade-Mark and Copyright Law, $5.00; Public Utility Law, $3.00; Real Property, Probate and Trust Law, $3.00; Taxation, $6.00.

Blank forms of proposal for membership may be obtained from the Association offices at 1155 East Sixtieth Street, Chicago 37, Illinois.

American Bar Association

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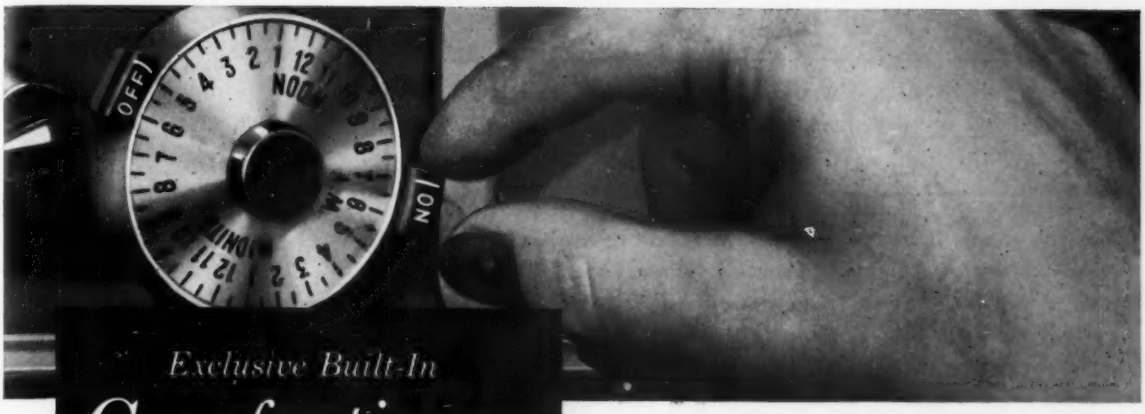

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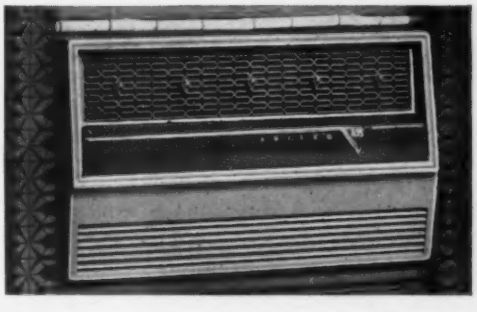

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■ Members of our Association are invited to submit short communications expressing their opinions, or giving information, as to any matter appearing in the Journal or otherwise within the province of our Association. Statements which do not exceed 300 words will be most suitable. The Board of Editors reserves the selection of communications which it will publish and may reject because of length. The Board is not responsible for matters stated or views expressed in any communication.

A Sabbatical from Practice for Research in the Law

■ The establishment of the American Bar Center presents an opportunity which has not been mentioned, as far as I know, in the many descriptions of its purposes. The Center can, and I think should, combine with its research program an effort to promote direct participation by practicing lawyers. Should such an effort be successful, the Center would perform a service to the profession which is not duplicated by law schools.

At least two substantial benefits are possible. One is the providing of an institutionalized means to satisfy and even encourage the yearning which infects many practicing lawyers to look thoroughly into certain problems free from the pressures of practice. This yearning must now be largely suppressed and increasingly so as law teaching becomes more and more a separate profession that can only be entered at an early age. The other benefit is the exploiting of the experience of practitioners, particularly in fields where the law seldom gets into books. (I have in mind, as an obvious example, much financial practice and custom which are seldom litigated.)

In addition to these benefits, the avoidance of duplication of effort strikes me as important in itself. The research facilities of our law schools are not used to capacity, principally from lack of funds, and I think the Association and the Center should avoid simply competing for grants to support projects that could as well go to one of the schools.

My suggestion, therefore, is that the Center encourage practicing lawyers to take "sabbatical years" from the practice and participate in the conduct of its research projects. I have no illusions about the practical obstacles to this, but I am not prepared to admit, without a strong try having been made, that the obstacles are insuperable. After all, the number of positions available in any event is small relative to the size of the profession.

It is not hard to imagine circumstances which might make competent lawyers available. A large firm or corporate employer might give an associate or employee a leave of absence because of the eventual benefit to be gained from his expert knowledge, or because it needs the substantive knowledge which the study would provide, or simply because it was willing to make a charitable contribution to the profession. Such an employer might even pay all or part of the researcher's salary during his leave. And there are also lawyers who find themselves free to leave the practice for all or part of a year either because they are very wealthy, or because they are young and free from responsibilities, or because they look upon a year's concentrated research as an opportunity for an escape and new departure.

There would, of course, be problems other than financial. One of the most interesting would be the maintenance of intellectual independence by a researcher whose salary is being paid by a corporation or who expects to return to the practice with clients in a particular industry. But this, surely, could be solved.

It would be interesting to learn the views of other lawyers on this proposal.

RAY GARRETT, JR.
Washington, D. C.

A Word of Praise for Mr. Levitan

■ I take great pleasure in expressing my congratulations to Mr. Mortimer Levitan, in this manner, upon his article entitled "Industrial Commissions: The Law, the Facts and the Record", which appears in the March, 1955, issue of the AMERICAN BAR ASSOCIATION JOURNAL, and to say that this article might well be read with profit by judges and presiding officers of all our courts, and all other tribunals, in which rights between man and man, individual and/or corporate, are tried and decided, as well as by all other participants in such proceedings, as a summary of practical pointers toward the ideal way of a search for truth by trial of human controversies.

GUSTAV DETJEN
St. Louis, Missouri

Thank You, Mr. Schmidt

■ For some time I have been wanting to congratulate you on your fine editorial "Religio Juridici" in the December JOURNAL. For some reason or other, the opportunity so to do has escaped me until now. I am now about to file this away, so this is my last chance.

There are many points of difference between me and the ruling hierarchy of the American Bar Association. Notwithstanding these, I think their editors by and large do an excellent job. I have been particularly pleased with the JOURNAL's stand on

(Continued on page 490)

(Contnued from page 488)

invasion of privacy, etc., in the recent McCarthy arguments.

JOHN F. SCHMIDT

Peoria, Illinois

He Takes Issue With Mr. O'Conor

■ Mr. O'Conor's article on the Fifth Amendment [41 A.B.A.J. 307, May, 1955] raises again the old dichotomy that a witness who refuses to testify because of self-incrimination is either guilty or is lying. This apparently logical argument from the premises of "self-incrimination" wholly overlooks the plain wording of that portion of the Fifth Amendment which provides "No person shall . . . be compelled . . . to be a witness against himself." This is clearly a right to refuse to testify, not a right to refuse to convict oneself. No amount of judicial dicta or gloss will change the plain meaning of the text or the history behind it which protects all American citizens, innocent or guilty, from proceedings like the Star Chamber, the inquisition, the rack and some "investigating" Congressmen who have so overstepped the bounds of fair play as to draw the censure of the Senate. Under the plain meaning of this amendment, each person has the right not to be a witness against himself and to demand that his accusers produce from other sources evidence to refute his presumed innocence. The term self-incrimination is not part of the Constitution and a logical argument from it as a premise is a perversion of the plain meaning and history of the text.

The further contention that there is something illegal, immoral or not decent about invoking a constitutional right and that one who does so is, *prima facie*, not fit to teach or practice law or medicine, is contrary to all the principles of the Bar which require our profession always to defend legal rights regardless of their unpopularity. We may well rue the day that prominent members of the Bar supported the proposition that there are "moral" and "immoral" constitutional provisions. It is as phony and un-American as a three dollar bill, as the expression "Fifth Amendment Communists" and as "McCarthyism" itself.

It is time for lawyers to return to the defense of our liberties while we still have them regardless of whether they appear in the Fifth Amendment or in some other equally respectable part of the Constitution.

FREDERICK K. BEUTEL

University of Nebraska
Lincoln, Nebraska

He Likes Mr. Gerhart on Legal Writing

■ We have just read Mr. Gerhart's article in the December issue of the JOURNAL. It is our humble opinion that this is a very timely, well written and instructive article and gives some fundamental rules for writing which will be helpful to those of us who write legal articles from time to time and also for the younger members of the Bar who are just

(Continued on page 492)

(Continued from page 490)

considering this field of endeavor. We congratulate you on this interesting article and believe that it will stimulate interest in the preparation of legal articles.

GIBSON B. WITHERSPOON
Meridian, Mississippi

He Likes Our New Cover

■ It has been my privilege to be a member of the Association for almost a year.

Unusual as it may be, I have no adverse criticism to offer concerning your excellent publication. Not all of the articles hold the same interest for me, but they maintain a high standard.

The new (March) cover is attractive. I approve of your plan to change the figure and color each month.

I, too, had noticed the damaged covers, but had placed the blame on our local post office. Apparently they are due an apology.

BERNARD W. GORMAN
Tarkio, Mississippi

Preserving Historical Papers—*What One State Is Doing*

■ After reading "The President's Page" in the March issue of the JOURNAL [41 A.B.A.J. 195], I decided to write you and tell you of a program which the judges and I are working on in Richmond.

We supposedly have the most valuable collection of court papers that is to be found in any federal court in the United States. We have the original Aaron Burr trial papers, including indictments and other papers incident to the trial of Aaron Burr. We have the original indictments against Jefferson Davis, Robert E. Lee and some several other Confederate leaders. There are also many documents of interest found among the British Debt cases, including the original papers in *Jones* v. *Hylton,* reported as *Ware* v. *Hylton,* 3 Dallas 199. You will recall that this is of historical interest in connection with the Bricker Amendment. There are also original manuscript pleadings prepared by Marshall, Henry and others of that period. David J. Mays used many of these records as source material for his life of Pendleton, which won the Pulitzer Prize, as well as a number of other awards. Unfortunately, our facilities for safekeeping and preservation are today inadequate and many of the records are in bad condition.

Several years ago we started on a program to have these papers preserved and the job is progressing very satisfactorily. The State of Virginia is very fortunate in having a man who has devised the best process for the restoration of old papers that has yet been devised. He has restored papers for many foreign governments, and has done work for

(Continued on page 494)

(Continued from page 492)

Franco of Spain, and Peron of Argentina. He has restored a good many of the state papers of Ethiopia, Italy and several other foreign countries. The Archives Department of the State of Virginia is doing this work for us and up until the present time The Society of the Cincinnati in Virginia has donated five thousand dollars toward the cost of this restoration.

The State of Virginia is doing this because we feel that these papers are of more interest to the people of Virginia than they would be to the nation and if we have them done at the archives in Washington, they would want to keep them there. After the Aaron Burr trial here in 1807, some of the Burr papers were forwarded to Ohio for his trial there. The order of the court in Richmond directed that these papers should be returned to the Clerk's Office in Richmond upon the conclusion of the trial in Ohio, but instead of returning them to Richmond, they were sent to the archives in Washington, where they are now lodged.

We would be glad to have anyone interested in this project come and inspect these papers at any time.

WALKLEY E. JOHNSON
Clerk, United States District Court
Richmond, Virginia

What's New in the Law

■ Just a line to tell you how much I (and I am sure innumerable other readers of the JOURNAL), profit by the regular reading of your department "What's New in the Law". Your Supreme Court digests are also of the highest value and I read them regularly. Much of what appears in them one is likely to pick up elsewhere also, but the material in "What's New in the Law" would escape one almost entirely were it not for your labors. You seem to be able to pick out of the vast mass of material which you must winnow the very things one wants to know about.

LEWIS MAYERS
The City College of New York

A Forced Construction of the Constitution

■ The recent letter from Everett C. McKeage appearing in the February JOURNAL refers to the statement of Mr. Justice Holmes to the effect that the Supreme Court sits as a continuing constitutional convention. The danger inherent in this doctrine was pointed out over forty years ago by Raleigh C. Minor, Professor of Constitutional Law at the University of Virginia, when he wrote:

> The writer shall be happy, whatever may be the reader's views of constitutional interpretation, if he shall have impressed upon the latter the jealous caution that should be exercised in enlarging the federal powers and the necessity of preserving immaculate and untarnished the reserved powers of the States as he sees them.
>
> Let him beware of the extension of federal powers by construction, judicial, legislative or executive, merely because of the argument from convenience or from the inefficiency of the State governments or of State regulation. Nothing is more insidious, nothing more dangerous.
>
> If a power is one reserved by the States and, after long and patient trial and experiment, the States prove incompetent to exercise it properly, and it is essential that it be so exercised, then let the power be transferred to the federal government by amendment to the Constitution. If the necessity is not great enough and evident enough to induce the legislatures of three-fourths of the States to assent to the transfer, it may be fairly assumed that the transfer is not so essential after all.
>
> But in any event let it not be accomplished by a forced construction of the Constitution. This is even now the canker that is slowly but surely eating away the reserved rights of the States and sapping their powers. If the process be not checked, the time must certainly come when the sovereign States will be nothing more than mere municipal corporations with only such powers left them as the federal government may choose to allow.
>
> God save the fair fabric of the Constitution from such a fate!

S. BRUCE JONES
Bristol, Virginia

The Hoover Commission Report:

Improvement of Legal Services and Procedure

by **Whitney R. Harris** · ***Executive Director of the American Bar Association***

▪ **On April 11, 1955, the Commission on Organization of the Executive Branch of the Government, of which former President Hoover is the Chairman, submitted to Congress a report calling for important improvements in legal services and procedure of the executive branch of the government. The recommendations of the Commission were based upon the comprehensive study of its task force on legal services and procedure. Mr. Harris was the staff director of the task force. His article is an analysis of the proposals of the task force and the recommendations of the Commission. Because of the importance of the subject, the Journal will publish Mr. Harris's analysis of the report in three installments.**

▪ Probably the most far-reaching and significant report ever to have been made upon legal services and procedure in the executive branch of the Federal Government was submitted by the Hoover Commission to the Congress and released to the public on April 11, 1955.[1]

This report was based upon a comprehensive study which had been made over a period of several months by the Commission's Task Force on Legal Services and Procedure, under the chairmanship of James M. Douglas, former Chief Justice of the Supreme Court of Missouri.[2]

While both the task force and the Commission reports have been laid before the Congress, only the latter carries the imprimatur of the Commission itself. The task force functioned primarily as a fact-finding instrumentality of the Commission.[3] Consequently, this presentation is based primarily upon the report of the Commission and only secondarily upon the study of the task force.

The Supremacy of Law

In describing the distinguishing characteristics of the common law, former Chief Justice Stone wrote of the "all-pervading doctrine of the supremacy of law", and he observed that "the agencies of government are no more free than the private individual to act according to their own arbitrary will or whim, but must conform to legal rules developed and applied by the courts".[4] In making its studies and formulating its proposals, the task force sought to give effect to this fundamental precept of the common law.

Lawyers serving in government have a distinctive responsibility to the law which transcends their obligation to administrative superior officers. Where a statute calls for an administrative hearing, it is the government lawyer who must assure that the hearing is conducted in accordance with due process of law. In counseling others, he may not merely advise whether a proposed action may be accomplished with impunity, but he must state with candor whether the action is consistent with governing constitutional and statutory provisions and the purpose and intent of the law.

Lawyers who appear before administrative agencies have an equivalent obligation to the law. Whether a proceeding is administrative or judicial, the duty of the lawyer is the same. Standards of professional conduct do not change with the forum. And a similar duty necessarily devolves upon the non-lawyer who may be accorded a limited privilege to represent parties in administrative proceedings. The use of influence and special advantage by any person serving in a representative capacity, whether in judicial or administrative proceedings, cannot be tolerated if the rule of law is to be respected and preserved.

1. The members of the Commission were Herbert Hoover, *Chairman*, Herbert Brownell, Jr., James A. Farley, Arthur S. Fleming, Homer Ferguson, John L. McClellan, Robert G. Storey, Clarence J. Brown, Chet Holifield, Joseph P. Kennedy, Sidney A. Mitchell and Solomon C. Hollister.

2. The other members of the task force were Reginald Heber Smith, *Vice Chairman*, Ross L. Malone, Jr., *Secretary*, Herbert W. Clark, Cody Fowler, Albert J. Harno, James M. Landis, David F. Maxwell, Carl McFarland, Harold R. Medina, David W. Peck, E. Blythe Stason, Elbert P. Tuttle, and Edward L. Wright. Special consultants were Robert H. Jackson, Arthur T. Vanderbilt and George Roberts.

3. Robert G. Storey, *The Second Hoover Commission: Its Legal Task Force*, 40 A.B.A.J. 483 (June, 1954).

4. Harlan F. Stone, *The Common Law in the United States*, 50 HARV. L. REV. 4, 5 (1936).

Inadequately defined powers and ineptly devised procedures are further impediments to the supremacy of law. The possibility of arbitrary action by administrative instrumentalities is best avoided by clear statutory delegations of authority, conditioned by specific standards and executed in accordance with procedures proved by experience to be best suited to protect the just rights of all parties.

> Arbitrary power and the rule of the Constitution cannot exist. They are antagonistic and incompatible forces; and one or the other must of necessity perish whenever they are brought into conflict. . . . To escape assumptions of such power on the part of the three primary departments of the government is not enough. Our institutions must be kept free from the appropriation of unauthorized power by lesser agencies as well. And if the various administrative bureaus and commissions, necessarily called and being called into existence by the increasing complexities of our modern business and political affairs, are permitted gradually to extend their powers by encroachments—even petty encroachments—upon the fundamental rights, privileges and immunities of the people, we shall in the end, while avoiding the fatal consequences of a supreme autocracy, become submerged by a multitude of minor invasions of personal rights, less destructive but no less violative of constitutional guaranties.[5]

Throughout the deliberations of the task force and the Commission, every proposal and recommendation was tested against the proposition that what is really important in the administration of modern government, which exercises powers not imagined by the founders of the Republic, is that the instrumentalities and agents through which it acts be subject to the law which must be supreme if men are to remain free.

Study of the Task Force

The task force did not propose a return to the rigid concept of the rule of law as expounded by Dicey that no man "can lawfully be made to suffer in body or goods except for a distinct breach of law established in the ordinary courts of the land".[6] It took note of the fact that tremendously important private rights are now adjusted at the administrative level of government. Mr. Justice Jackson observed in the *Wong Yang Sung* case that "multiplication of federal administrative agencies and expansion of their functions to include adjudications which have serious impact on private rights has been one of the dramatic legal developments of the past half-century".[7] But the task force sought to identify judicial functions of administrative agencies which might be removed from the executive to the judicial branch of the Government, and it endeavored to find more certain methods to assure protection for private rights in administrative adjudications which, for practical reasons, could not readily be so removed.

The task force study was very broad, affecting in some degree every agency and department of the executive branch. Information was obtained primarily through questionnaires which were sent to all departments and independent establishments. Two questionnaires dealt with civilian legal services, one with administrative procedure and one with the representation of parties before agencies. The questionnaires were comprehensive and the responses were generally complete and accurate. Several agencies supplemented their replies with extensive memoranda. In addition, the subcommittees—or task groups—of the task force conducted executive sessions at which persons in and out of the Government were invited to express their views on the matters under study.

The voluminous materials thus assembled were carefully compiled and thoroughly analyzed. A complete set of these basic data has been obtained for the American Bar Center where it is available for future reference and study. A statistical analysis of the research materials was prepared by the task force staff[8] and has been published in a limited multilith edition. The narrative report of the task force was published in book form.[9] It contains the seventy-four specific proposals of the task force for improvements in legal services and procedures, together with explanatory discussion and suggestions for legislative and administrative implementation of the proposals.

Commission Report

With relatively minor modifications, the Commission acted favorably upon almost all of the task force proposals. It consolidated several of them, reducing the total number of recommendations to fifty-two. The Commission proposed one recommendation independent of task force action. The Commission report in other respects followed closely the general report of the task force. Among the most important recommendations of the Commission were the following:

(1) Establishment of an Administrative Court of the United States to consist of three sections in the fields of taxation, trade regulation and labor relations, respectively.

(2) Creation of a corps of hearing commissioners serving as judicial officers, with authority to conduct all administrative hearings for departments and agencies of the executive branch.

(3) Enactment of an Administrative Code to replace and substantially revise the Administrative Procedure Act of 1946.

(4) Conforming procedures in the adjudication of administrative cases as closely as possible to established judicial practices and enlarging the scope of judicial review of administrative decisions.

(5) Creation of a career legal service for all attorneys in the executive branch.

5. Mr. Justice Sutherland in *Jones* v. *Securities and Exchange Commission*, 298 U. S. 1, 24, 25 (1936).

6. Dicey, LAW OF THE CONSTITUTION (8th Ed. 1927) 183-184.

7. *Wong Yang Sung* v. *McGrath*, 339 U. S. 33, 37 (1950).

8. Members of the task force staff were Whitney R. Harris, *Staff Director*, Courts Oulahan, *Research Director*, Richard L. Perry, *Assistant Research Director*, Alice C. Stahl, *Administrative Assistant*, George J. Grindle, *Attorney-Consultant*, James W. Kelley, *Attorney-Consultant* and William F. McManus, *Research Assistant*. Henry M. Shine, Jr., and Lawrence B. Lindemer maintained liaison with the Commission. Other attorneys assisted the staff on special studies.

9. The reports of the task force and the Commission may be obtained from the Superintendent of Documents, Washington 25, D. C. Price of the former is $1.25, of the latter, 45 cents.

(6) Establishment of an Office of Legal Services and Procedure in the Department of Justice to administer the career legal service and to assist agencies in the clarification, simplification, and uniformity of agency rules of procedure under the Administrative Code.

(7) Integration and coordination of all legal staffs of departments and agencies of the executive branch.

(8) Reorganization of the Department of Justice into two divisions—one for legal management and the other for litigation, each to be co-ordinated by an Assistant Deputy Attorney General.

(9) Establishment of statutory minimum standards of conduct for all persons who appear in a representative capacity before departments and agencies of the executive branch.

(10) Creation of a Federal Grievance Committee to hear complaints against attorneys for misconduct in administrative practice, and empowering United States district courts to take disciplinary action against such attorneys.

(11) Restriction of the practice of law before departments and agencies to members of the Bar and inauguration of a simple method by which an attorney in good standing may appear before any agency without further qualification.

The following discussion of the recommendations of the Commission, as related to the proposals of the task force, is presented under the three primary heads of Legal Services, Representation Before Agencies, and Legal Procedure.

I. Legal Services

There are approximately 9,700 lawyers employed in the executive branch of the Government. Of this number, 3,100 are military personnel and 1,300 are civilian attorneys in the Department of Defense. In the non-military departments, offices and agencies of the Federal Government only 5,300 persons occupy attorney positions. The largest single staff is in the Department of Justice, with 1,773 attorneys employed as of January 1, 1954; the next largest is in the Veterans' Administration, which employs 844 attorneys.[10] The number in other agencies varies greatly. Some, like the Defense Transport Administration, have only a single attorney.

Co-ordination and Integration

The task force found that many agencies have established legal staffs without express statutory authority and that very small staffs usually are not economical. The task force felt that in place of small independent staffs agencies should utilize the legal services of the Department of Justice. It proposed that express statutory approval be requested for every legal staff and that in principle no approval should be given for a staff consisting of fewer than ten attorneys. The Commission recommended that Congress review the justification for any legal staff not created by express statutory authority and that consideration be given to the retention of small legal staffs existing in many agencies.

The task force found that legal services within the executive branch are seriously lacking in co-ordination. Attorneys serve their own agencies without much regard to other legal staffs. Inconsistent opinions have been rendered, giving rise to conflicting agency action, and many inter-agency conflicts have been carried to the courts and litigated at considerable expense to the Government. The Commission agreed with the task force that the Department of Justice should effectuate greater co-ordination of legal services through conferences of general counsel of agencies and departments, and by the methods of consultation and agreement.

The task force further proposed that a formal method of adjusting inter-agency conflicts arising out of the application, construction or interpretation of statutes should be established within the executive branch. It recommended that authority be conferred upon the Office of Legal Counsel in the Department of Justice to resolve such conflicts and that only where the national interest required should they be submitted to the courts for determination. The Commission agreed with the task force that this procedure should be established, but it proposed to confer the authority directly upon the Attorney General and to apply it to differences in the interpretation of applicable law as well as of statutes.[11] The Commission recommended that the procedure be voluntary and not mandatory as the task force had proposed.

Chicago Photographers

Whitney R. Harris

The Commission adopted the proposal of the task force that every independent legal staff authorized by the Congress should be integrated under the professional direction of a general counsel. This means in substance that the competency of all attorneys within each agency will be judged by attorneys rather than by administrative personnel. As the Commission said, "professional supervision should be provided for professional services".[12]

10. The task force and the Commission agreed that a substantial reduction in the number of attorneys employed in the Veterans' Administration could be accomplished by curtailing the Veterans' Administration Guardianship Service. No other instance of employment of an excessive number of attorneys by an agency was reported by the task force.

11. The task force felt that inasmuch as the Department of Justice might itself be a party to a proceeding to resolve conflicts of jurisdiction, this exceptional authority should be vested in the Office of Legal Counsel rather than in the Attorney General.

12. *Report of the Commission on Organization of the Executive Branch of the Government on Legal Services and Procedure*, March, 1955 (henceforth cited as *Com. Rep.*) page 8.

Department of Justice

The office of Attorney General of the United States was established by the Judiciary Act of 1789. The Attorney General was given the responsibility of counseling and advising the President and the heads of departments. While he had authority to prosecute all suits in the Supreme Court in which the United States was interested, it was not until 1861 that he was given supervision over United States attorneys.

The Department of Justice was created in 1870 and the office of Solicitor General was established at that time. The Congress sought to co-ordinate legal services in the executive branch by transferring the solicitors of the various departments to the Department of Justice. But this first attempt at co-ordination was not fully effective since older laws establishing independent legal staffs were not repealed. By executive order in 1933, the handling of all litigation for departments and agencies was transferred to the Department of Justice. Since that time, however, various agencies have been given statutory authority to conduct their own litigation.

Legal management functions of the Department of Justice have assumed increasing importance in recent years. The Attorney General is now responsible for the Office of Alien Property, the Immigration and Naturalization Service, the Pardon Attorney, the Bureau of Prisons and the Parole Board. The task force proposed the addition of other legal management functions in the administration of the career legal service and the supervision of administrative procedure.

To more accurately reflect these enlarged responsibilities, the task force proposed that the Department of Justice be organized into two primary divisions—one for legal management and the other for litigation. Each division would be supervised by an Assistant Deputy Attorney General. The Commission concurred in these proposals, except that it would restrict the authority of the Assistant Deputy Attorneys General to the co-ordination of the various offices within each division.

Department of Defense

The task force found that legal services in the Department of Defense were not adequately integrated, and it took note of the parallel performance of legal services by military as well as by civilian personnel, and the conflicts in authority which sometimes arise by reason thereof. Both the task force and the Commission concluded that adequate integration of legal services could be achieved only by conferring authority on the general counsel of the Department of Defense to exercise supervision over all legal services in the defense establishment.

To assist the general counsel in executing this responsibility, the Commission recommended that a legal co-ordinating committee be established to consist of the general counsel, as chairman, and the general counsel and Judge Advocates General of the three military departments. The committee would review the performance of legal services, determine policy in legal administration, establish uniform recruitment procedures and develop a co-ordinated program of legal operations.

The Commission further recommended that there be a general counsel, with the rank of Assistant Secretary, to exercise final authority over all legal services within each military department. While the Judge Advocates General would retain primary responsibility for military justice and military affairs, the general counsel would supervise the legal operations of the Judge Advocates General as well as of civilian legal staffs within the military departments. This significant recommendation would make the Judge Advocates General of the Army, Navy and Air Force professionally responsible to the general counsel of their respective departments.

It was recommended that a career legal service for civilian attorneys in the Department of Defense be developed and supervised by a civilian legal personnel committee of four members, one representing the General Counsel of the Department of Defense and one for each of the general counsel of the three military departments. The Committee would perform its functions pursuant to policies and directives of the office administering the career legal service for attorneys in other departments and agencies of the executive branch.

Career Legal Service

One of the most important proposals of the task force, concurred in by the Commission, was the establishment of a career service for attorneys serving in the executive branch. Of this the Commission said:

> It is toward the two objectives—that of obtaining attorneys of ability, and that of obtaining attorneys with an appreciation of the supremacy of law and duties imposed upon them by it—that the recommendations of our task force for an independent legal career service are directed.[13]

Attorneys serving in the executive branch are not, at present, under any form of civil service. The task force studied the problem with great care before concluding that a career service should be proposed. It reached that conclusion primarily in the belief that it would help the Government to attract and to retain outstanding lawyers and that it would strengthen the professional spirit of all attorneys serving in the executive branch.

The task force felt that it would be inadvisable to place attorneys under the general civil service system. And the Commission, having noted that separate career services now exist for certain government personnel, recommended that a career legal service for all civilian attorneys, except those in appointive categories, be established in the executive branch, separate and distinct from the Civil Service Commission and other career employee services.

That decision left open, however, the instrumentality which should administer the career legal service. The task force concluded that an office

(Continued on page 558)

13. *Com. Rep.*, page 16.

The Case of *Berman* v. *Parker:*

Public Housing and Urban Redevelopment

by **Jacob M. Lashly** • *of the Missouri Bar (St. Louis)*

■ **Berman v. Parker, decided by the Supreme Court last November, dealt with the constitutionality of a District of Columbia statute permitting the taking of private property for slum clearance. The property in question, however, was not a slum; it was being condemned so that the entire area could be rebuilt in accordance with the land-use plan of the National Capital Planning Commission. The Supreme Court upheld the validity of the statute. Mr. Lashly points out the great political implications of the decision.**

■ In *Berman* v. *Parker,* 348 U.S. 26, 75 S. Ct. 98, 99 L. ed. (Adv. p. 63), decided November 22, 1954, the judgment of a three-judge District Court for the District of Columbia was modified and, as modified, affirmed.

The decision and opinion passed over quietly, like the Fourth of July in a foreign country. Yet, it informed the country that we have come to the end of something, to the end of much that we have been accustomed to regard as precious and to suppose that we would never relinquish. The case involved an appeal from the District Court of the District of Columbia upon a challenge to the constitutionality of the Redevelopment Act of 1951, and the validity of the taking of certain property by the Redevelopment Land Agency of the District. The National Capital Planning Commission laid out a redevelopment district, a land use plan and certain project areas. Portions of the project area involved were "insanitary". Other portions were not. The project under consideration contained a department store, a retail hardware store, and other first-rate business improvements and residences whose owners objected to having their property demolished and turned over to others as apartment sites or for other construction which would accord with area programs of the District planners. The procedures involved the exercise of police power, enforced by condemnation, after the fashion of states.

The Fifth Amendment explicitly provides that private property shall not be taken without due process of law, and not for public use without just compensation.

The original concept of the sanctity of private property as an important incident to the blessings of liberty has been subjected to gradual fundamental changes brought to a climax in this case. Two world wars and one profound economic depression have accelerated the process. The broad sweep of the decision banishes all doubts and shores up the foundations for those reluctant to take the final step at any point. The taking of private property for war purposes often became necessary as a security measure; the extension of the police power and of the functions of eminent domain beyond anything previously conceived has been tolerated, slightly less cheerfully, as a relief measure. The *Berman* case marks the point of no turning back and leaves little doubt that the people have surrendered to the state something of great value, in an emotional sense, which has been cherished heretofore. In the universal concentration upon one emergency after another, the changes in concepts of the rights of property have come about almost unperceived. Like flakes of snow falling in the night, they drift noiselessly down in confused disorder, but in the morning there is the blanket of white.

Public *use* is changed to public *purpose,* or benefit. Obviously, private property taken for a public use would revert to its owner, or his heirs should the specific public use be terminated or abandoned. To avoid these consequences, the practice has been enlarged to permit the taking of the property in fee simple by condemnation. Thus there is no reverter. In the language of Mr. Justice Douglas speaking for the Court:

> The District Court indicated grave doubts concerning the Agency's right to take full title to the land as distinguished from the objectionable

> buildings located on it. . . . We do not share those doubts. If the Agency considers it necessary in carrying out the redevelopment project to take full title to the real property involved, it may do so.

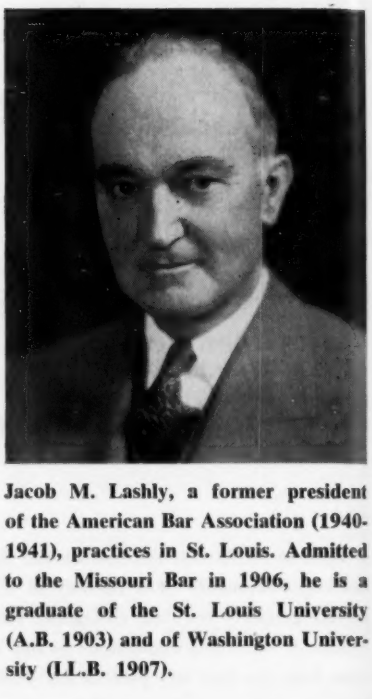
Eminent domain is an inherent power, founded upon the law of necessity. Constitutional provisions, both state and federal, do but define the limitations upon sovereign powers which otherwise would be unlimited. The procedures for condemnation are creatures of the legislative, and the extent of the taking—whether the whole title or merely the use for a special purpose—is left to the legislature. The basic fact as to whether the use (purpose) for which the property is to be taken is in fact public, traditionally has been reserved to the courts to be determined under the evidence in each case. The role of the judiciary in making such determinations "is an extremely narrow one", however, the Court observed when that point was reached.

The opinion of the three-judge court, written by Circuit Judge Prettyman, is itself noteworthy. It represents what might be called the pioneers' last stand. For orderly treatment, the legal problems presented by the record were separated into three main divisions. The first was the problem of the slum. The court found no difficulty in deciding that Congress had the power to delegate to the District Government the power to clear slums.

The second problem involving seizure of the title to the lands of private owners for resale, after slum clearance, to other persons for a purely private use required closer reasoning. As to this the lower court remarked that "The extensions of the concept of eminent domain, to encompass public purpose apart from public use, are potentially dangerous to basic principles of our system of government." And the court added that "it behooves the courts to be alert lest currently attractive projects impinge upon fundamental rights." With these limitations and warnings in mind the power to seize property under the Act was approved "only for the purpose of eliminating or preventing conditions injurious to the public health, safety, morals or welfare". This would seem to require covenants of restriction in the resale deeds limiting the use after such resale to the purposes of the taking by the exercise of eminent domain.

In dealing with the third and final point the court approached the subject of the right under the Act to take property which is not of itself a slum but is "out-of-date, called by the Government 'blighted' or 'deteriorated' ". Just here the author of the opinion rose to state in picturesque and arresting language the crucial point at which the barriers were either to be preserved or abandoned, in future constructions of "welfare". To digest or paraphrase the passages which present what, for lack of a better term, might be called the conservative argument of the District Court, would only impair the message which they convey, and correct reporting requires that they should be allowed to speak for themselves:

> The hypothesis . . . is an urban area which does not breed disease or crime. Its fault is that it fails to meet what are called modern standards. Let us suppose that it is backward, stagnant, not properly laid out, economically Eighteenth Century—anything except detrimental to health, safety or morals. Suppose its owners and occupants like it that way. Suppose they are old-fashioned, prefer single-family dwellings, like small flower gardens, believe that a plot of ground is the place to rear children, prefer fresh to conditioned air, sun to fluorescent light. In many circles all such views are considered "backward and stagnant." Are those who hold them "therefore blighted"? Can they not, nevertheless, own property? Or suppose these people own these homes and can afford none more modern. The poor are entitled to own what they can afford. The slow, the old, the small in ambition, the devotee of the outmoded have no less right to property than have the quick, the young, the aggressive, and the modernistic or futuristic. Is the modern apartment house a better breeder of men than is the detached or row house? Is the local corner grocer a less desirable community asset than the absentee stockholder in the national chain or the wage-paid manager? Are such questions as these to be decided by the Government? And if the decisions be adverse to the erstwhile owners and occupants is their entire right to own the property thereby destroyed? Even if the line between regulation and seizure, between the power to regulate and the power to seize, is not always etched deeply, it is there. And, even if we progress in our concepts of the "general welfare," we are not at liberty to obliterate the boundary of governmental power fixed by the Constitution.



Jacob M. Lashly, a former president of the American Bar Association (1940-1941), practices in St. Louis. Admitted to the Missouri Bar in 1906, he is a graduate of the St. Louis University (A.B. 1903) and of Washington University (LL.B. 1907).

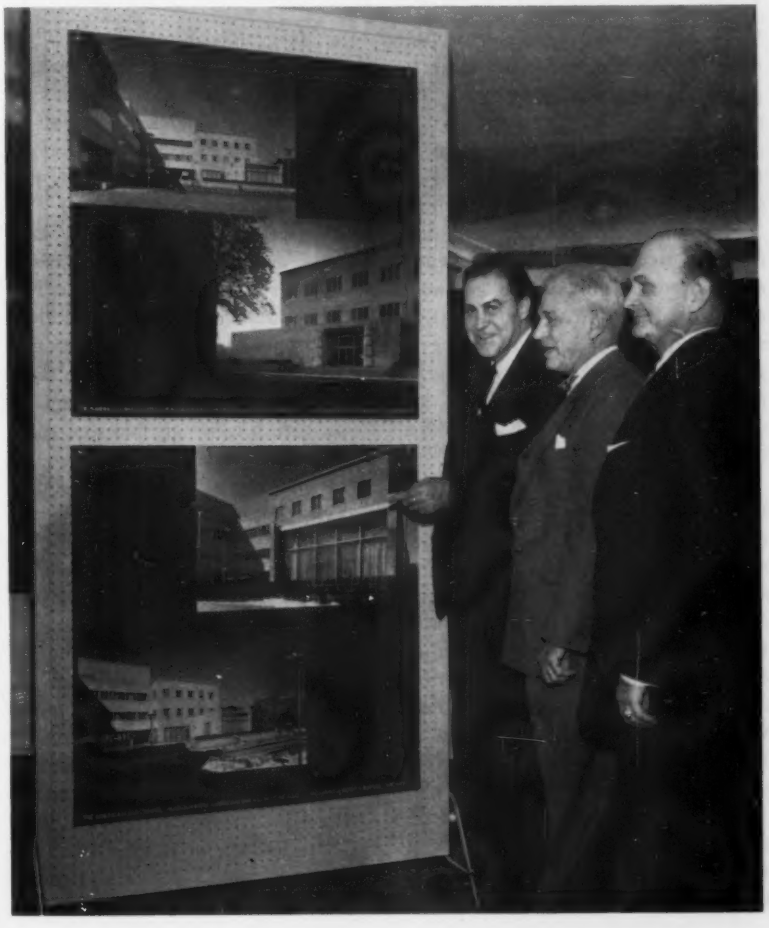
The conclusion reached was consistent with the reasoning and was such as would be expected from the preceding dramatic statement of principles and theory of government. The District Redevelopment Act would be constitutional if applied within these limitations, otherwise it would not be valid.

There it is. The case is in for the individual property owner confronted with changing conditions in his area. But the argument came too late. Legislative authority and the courts of nineteen states had built a foundation for the answer. Lingering doubts expressed in state court opinions along the way were silenced and the earnest questions asked with so much feeling by the District Court were completely settled. In meeting

the issue squarely and roundly Mr. Justice Douglas, speaking for the Supreme Court, did not hesitate. He firmly laid the cap sheaf upon the shock.

> We do not sit to determine whether a particular housing project is or is not desirable. The concept of the public welfare is broad and inclusive. . . . The values that it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled. In the present case the Congress and its authorized agencies have made determinations that take into account a wide variety of values. It is not for us to reappraise them. If those who govern the District of Columbia decide that the Nation's capital should be beautiful as well as sanitary, there is nothing in the Fifth Amendment that stands in the way.

Thus the constitutional guaranties of the Fifth as well as the Fourteenth Amendments are satisfied when a just payment is made for a governmental taking. The conditions and the purposes of the seizure are largely left to the discretion of the agency wielding delegated legislative powers. There is no office for the courts to perform in making the decisions which underlie the right of condemnation of property incorporated in a housing or urban redevelopment project, except only in cases where the findings of the agency have been the result of conduct which is alleged to have been arbitrary, corrupt or fraudulent. What measures are for the public good and what are public uses and purposes in the first instance are matters for legislative determination. The legislative decisions of those agencies, when acting within their constitutional and statutory powers, are conclusive upon property owners. Courts are to determine questions of power, not policy. The decision seems to introduce a new era in democracy. Community symmetry and benefits are to be substituted for individual preferences, and the privileges of property ownership and the rights of property uses are to be directed and, in a larger measure than previously, controlled by public authority. The decision is of great political significance as well as legal consequence.



▪ The new American Bar Center has been cited for "outstanding architectural merit" by the Chicago Chapter of the American Institute of Architects and the Chicago Association of Commerce and Industry. The new $1,500,000 headquarters of the Association was picked as the finest building in its class erected in the City of Chicago in the past five years.

The award was made at a luncheon in April. (Left to right) Allan H. W. Higgins, Roy E. Willy and Ross L. Malone, Jr., examine photographs of the Center. They represented the Association and received the bronze plaque commemorating the award. The plaque is now in place in the American Bar Center.

Roger Brooke Taney:

Fifth Chief Justice of the United States

by Earl Warren · *Chief Justice of the United States*

■ **Bitter in their hatred of him in his lifetime, Roger Brooke Taney's enemies managed to slander his reputation for years after his death. Today, his place in our history as a great Chief Justice seems established. This is Chief Justice Warren's tribute to Taney delivered on the occasion of the dedication of a monument to the late Chief Justice in Frederick, Maryland, last October.**

■ Through your gracious invitation, it has become my privilege to join you in this pilgrimage to historic Frederick. This community has a secure place in American annals. It was here that Francis Scott Key spent his youth and early manhood. It was here that Barbara Frietchie—immortalized by Whittier's poem—dramatized her devotion to the cause of national unity. And, above all, it was here that Roger Brooke Taney—son of a Calvert County tobacco planter—laid the foundation of one of the most distinguished careers in the nation's history.

His life began a year after the Declaration of Independence; his life ended a few months before Appomattox. During that span of eighty-seven years, this nation was founded; a Constitution was established and its central doctrines were expounded; thirteen colonies grew to a union of thirty-six states, and that union was nearly torn asunder. In 1796, at the age of 19, Taney began his study of law in the office of Judge Jeremiah T. Chase in Annapolis. Three years later, he was admitted to the Bar and was elected to the Maryland Legislature from Calvert County. In 1801—the year that John Marshall assumed his duties as Chief Justice—Taney commenced the practice of law here in Frederick. He came at the urging of Francis Scott Key, a dear friend and fellow attorney, and later married Key's sister Anne.

Success in the law came to him quickly, and he was soon recognized as a leader of the Maryland Bar. For twenty-two years, here in Frederick, he pursued the law diligently and set the stage for his future greatness. While Marshall was expounding the Constitution through his enduring decisions, Taney appeared before the Bar expounding his legal philosophy and his vision for the union. It was here that he attained his maturity and stature in the law, and when he moved to Baltimore in 1823, he was ready for the high offices he was destined to hold and for the tempestuous times through which he was to play such a dynamic part for more than forty years. First as Attorney General of Maryland and then as Attorney General of the United States in the Cabinet of President Andrew Jackson, he became one of the great lawyers of his time. More or less by political fate, he later became Secretary of the Treasury, but because of his role in the violent controversy stimulated by Jackson's attack on the United States Bank, his appointment to the Treasury was never confirmed by the Senate. A similar fate awaited his appointment in 1835 as Associate Justice of the Supreme Court. These were indeed turbulent times. But Jackson persisted and, only nine months later, sent his name to the Senate as successor to John Marshall. This time, after a bitter struggle, confirmation was obtained.

On March 28, 1836, Taney appeared before the United States District Court in Baltimore and in the presence of the distinguished Maryland Bar took the oath of office as the fifth Chief Justice of the United States. He commenced his judicial duties ten days later "on the circuit" by presiding over the United States Circuit Court in Baltimore. Thus began a judicial career that was to last twenty-eight years—a tenure as Chief Justice exceeded only by Marshall. During this turbulent period—roughly coterminous with the era from Jackson to Lincoln—he was to give the oath of office to seven Presidents, lead the Supreme Court through the most critical period of the nation's history, and serve as an able successor to Marshall as an expounder of the Constitution.

We meet today to honor his mem-

ory and to express in this monument our enduring admiration for him. It is fitting that we should do this. His services to state and nation, his exemplary Christian life—these alone would provide ample justification. But there is yet an additional reason. In a manner of speaking, today's tribute helps redress an old wrong—helps erase the calumny which Taney's enemies had hurled at him during his lifetime and which superficial historians preserved as gospel truth for a time after his death. Few men in American life—and surely no Justice of the Supreme Court—have been so grossly misrepresented as Taney. Until recent years, he was all too frequently characterized as the doctrinal enemy of his predecessor Marshall, as the exponent of narrow provincial interests, as a stalwart defender of the institution of slavery. But, by and large, with the passing of time, and the cooling of passions, that characterization has been discredited and the true Taney has emerged. We know him today as a needed balance to Marshall's conservative nationalism; as one who personally detested slavery, but who detested even more the prospect of violent disunion. We know him today as a great Chief Justice.

Taney's differences with Marshall have been strongly emphasized; their similarities have been largely ignored. Each had been a Federalist, a leader of the Bar of his state, and a cabinet member prior to appointment as Chief Justice. And although Taney had left the declining Federalist Party to support Andrew Jackson, it is reported that Marshall favored the nomination of Taney as Associate Justice. Marshall's approval of Taney was not misplaced, for there actually was no sharp break in constitutional interpretation between the opinions of the Court in the Marshall era and those after 1835. One reason, to be sure, was that there remained on the Court men, like Justices Story and McLean, who shared Marshall's strongly nationalistic views. But, in any event, there is little evidence to suggest that Taney ever desired any wholesale reversal of Marshall's doctrines. It is true that Taney differed with Marshall's interpretation of the commerce clause. To Marshall, the clause itself—granting to Congress the power to regulate interstate commerce—deprived the states of such power. To Taney, states could be deprived of this power only by appropriate legislation by Congress and then only if the state action was in irreconcilable conflict with the federal legislation. But, it should be noted, Taney did not dispute the supremacy of the national government in the field of commerce; he merely insisted that Congress must make its will explicit if state action is to be invalidated under the commerce clause. Similarly, in dealing with the impairment of contract clause, he did not dispute the immunity of state-granted corporate charters from retroactive state legislation; he merely insisted that, in the public interest, such charters should be strictly construed.

These views undoubtedly reflected Taney's deep concern over undue infringement of the power of the states to enact legislation necessary to the welfare of their citizens. Because of this concern, Taney is rightly regarded as a vigorous champion of so-called "state police powers". To Taney, as he declared in one of his most famous opinions—

> The object and end of all government is to promote the happiness and prosperity of the community by which it is established; and it can never be assumed that the government intended to diminish its power of accomplishing the end for which it was created.

This statement bears a striking similarity to Marshall's famous dictum:

> Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional.

Both men thus rejected the thesis that government is at best a necessary evil. They disagreed with each other only as to the proper apportionment of governmental powers in our federal system between the national government and the state governments. And on many issues of federal versus state power, there was not even this difference of opinion—for example, as to the exclusive power of the national government in conducting foreign relations. Indeed, with respect to the admiralty jurisdiction of the federal courts, the positions of the two men were reversed; in this field, Taney conceded greater power to the national government than Marshall was ever willing to claim. These apparent inconsistencies are understandable only in terms of Taney's philosophy of the Supreme Court's function. Unlike Marshall, who viewed the Court as primarily an organ of the national government, Taney conceived of the Court as an independent agency outside of and above both the national government and the states. In a notable opinion, proclaiming the unqualified power of the national government to enforce its laws without state interference. Taney declared:

> This judicial power was justly regarded as indispensable, not merely to maintain the supremacy of the laws of the United States, but also to guard the States from any encroachment upon their reserved rights by the general government. . . . So long . . . as this Constitution shall endure, this tribunal must exist, with it, deciding in the peaceful forums of judicial proceeding, the angry and irritating controversies between sovereignties, which in other countries have been determined by the arbitrament of force.

Throughout his long judicial career, Taney earnestly sought to steer this middle course. In his view, the Court's function was to serve as arbiter—subject of course to constitutional limitations—between the competing interests within our federal system. In large measure, that continues to be the Court's function a century later.

A necessary corollary of Taney's judicial philosophy was the principle of judicial self-restraint. In opinion after opinion, he reiterated his belief that the Court should not intrude itself into political controversies, that the Court was not concerned with questions of motive but only with questions of power, that other

branches of the Government should be permitted the maximum degree of freedom consistent with the express commands of the Constitution, that hence judges should stick closely to the constitutional text. With but one tragic exception, his decisions accurately reflected this philosophy, and today the motives of that exception are not questioned. That instance, as we all know, occurred when he was eighty years old, and the avalanche of criticism that descended upon him obscured for many years his other constructive work on the Court. With the courage that was characteristic of him, he philosophized:

> At my time of life when my end must be near I should have enjoyed to find that the irritating strifes of this world were over, and that I was about to depart in peace with all men and all men in peace with me. Yet perhaps it is best as it is. The mind is less apt to feel the torpor of age when it is thus forced into action by public duties.

And well he might long to "find that the irritating strifes of this world were over", for no man in our public life has ever suffered so many years of bad health and without complaint. From his youth, he was ill most of the time, and at no time during his long life was he expected to live more than a very few years. Only his indomitable courage, his devotion to family and nation and his faith in God sustained him.

Seven years later, when he was 87 years of age, still serving his country, ". . . the irritating strifes of this world were over . . ." at last for Roger Brooke Taney. On the morning of Columbus Day, 1864, he perceived that the end was near and asked to receive the last rites of his faith. That evening, according to his eldest daughter, " . . . he suddenly raised his head, all trace of suffering gone, his eyes bright and clear, said 'Lord Jesus receive my spirit,' and never spoke again." After a quiet ceremony in Washington, a special train carried his body to Frederick, where in St. John's Catholic Church—a church that Taney himself had helped build—requiem services were held. And here he rests today—free finally of the controversy he had known throughout his stormy career—surrounded at last by the peace which had so long eluded him.

Like some other great men, the passions of the age in which he lived eclipsed his greatness for many years, but even at the time of his passing there were those who recognized his true worth and who did not hesitate to express their belief. Three days after his death, on October 15, 1864, at a meeting of the Boston Bar, former Associate Justice B. R. Curtis of the Supreme Court, who had not always seen eye to eye with him, concluded a beautiful tribute to the departed Chief Justice in these words:

> It is one of the favors which the providence of God has bestowed on our once happy country, that for the period of sixty-three years this great office has been filled by only two persons, each of whom has retained to extreme old age his great and useful qualities and powers. The stability, uniformity, and completeness of our national jurisprudence are in no small degree attributable to this fact. The last of them has now gone. God grant that there may be found a successor true to the Constitution, able to expound and willing to apply it to the portentous questions which the passions of men have made.

Ninety years later Americans in all parts of the nation think of him in these same terms, and I am happy to join with you today in honoring his memory.

The President's Page

(Continued from page 483)

It is becoming increasingly important as time slips by that those who wish to participate in the Chief Justice John Marshall Bicentennial ceremonies should let us know at Headquarters. Each local and state association has received from Headquarters a request to furnish speakers who will utilize the decisions and writings and known philosophies of this great man in pointing out to our citizens, and particularly to our school and college students, the original concept of government under the Constitution. It is, I think, tremendously important that in each locality we cause to be brought to the minds of all citizens that we have drifted away from our concept of government of the three independent branches on a parity; that we have almost forsaken in this great nation that which made the nation great, to wit, the opportunity, the desire and inherent right to stand or fall on one's own accomplishments, and the willingness to work and be a useful citizen. Too many of our younger generation have been reared in the atmosphere of security being dangled in front of their eyes by a beneficent centralized powerful Federal Government. This may be the way that the people of this nation wish to go. If it is, then they should go that evil road fully advised, and with a complete understanding that they are giving up the virtues of government under which their predecessors have prospered and enjoyed freedoms and privileges never before known in the history of the world. Hence I appeal to all organizations of the Bar to enlist the services of their best and most sound eloquent speakers and solicit opportunities for them to be heard in churches, schools and service clubs, so that after the President of the United States and the Chief Justice of the United States speak at our Annual Meeting in Philadelphia from Independence Hall, we will be able to support these two great men in their dedication to the purposes of a truly constitutional government.

The Selection of Judges:

The Independence of the Federal Courts

by **Charles J. Bloch** • *of the Georgia Bar (Macon)*

▪ **Mr. Bloch is disturbed about the gradually increasing influence of the Attorney General in the selection of federal judges. During the last twenty years, he writes, the Department of Justice has become the chief litigant in federal courts, and at the same time the Attorney General, who heads the Department, has become the President's chief adviser in appointing members of the Federal Bench who will try the cases brought by the Department. Mr. Bloch proposes a constitutional amendment to change the method of selecting federal judges so as to prevent any possible curtailment of the independence of the judiciary. This article is taken from an address delivered before the Judicial Conference of the Fifth Circuit in New Orleans last year.**

▪ During the 1930's there arose a very gross misconception of the function of the judiciary in the American constitutional system.

That misconception was typified by the efforts then made to pack the Supreme Court, and to make radical changes in the judicial branch of the government.

That misconception is illustrated by specimens of ideas which men in high places expressed at that time. For example, the second volume of the diary of the Secretary of the Interior, Harold Ickes, has just been published. I have not had the chance to read it all, and I do not know that I ever will have the chance or the inclination. But I give you one or two quotations from the first 100 pages of it:

> The President read us the draft of the message that he was to deliver before the joint session of Congress the next day on the State of the Nation. . . . It raised the Supreme Court issue very clearly and very cleverly but very inoffensively. The line that he took was that there had been cordial and effective cooperation between the executive and legislative branches of the government during the past almost four years, but that there had been lacking that cooperation on the part of the judiciary that the people had a right to expect. He invited cooperation from the judiciary and he remarked in passing that the function of legislating should be left to the Congress, where the Constitution intended it to be. [Page 31.]

After the message to which Secretary Ickes referred had been delivered by the President, he writes this in his diary:

> It was clearly apparent that the message was well received, which means that those who heard it . . . are in a mood to join issue on the Supreme Court on its arrogant assumption of the right to overrule both Congress and the President in matters of legislation. . . . I imagine that this was the first time in our history that a president of the United States, in addressing Congress, has sharply, even if politely, criticized the judicial branch of the government. . . . I believe that we are on the eve of an era where the powers of the court will be much more strictly limited than they have been in the past. [Page 32.]

Then, a little later he says,

> No one can see ahead into history, but I suspect that this adroit move all along the line against the judiciary will be one of the outstanding things in American history for all time to come [Page 65.]

And in that same entry in his dairy he criticized Chief Justice Hughes because he would not make the Court "an instrument for social and political progress." (Page 67.)

Such was the germ of the ideas which became prevalent fifteen or sixteen years ago, and have had their effect on the judiciary of this nation, and, more important, *have had their effect on the attitude of the laymen toward the courts.*

And perhaps more important, they have had their effect on the ideas of conservative statesmen toward the courts, and particularly the Supreme Court.

Recently, I heard a speech delivered by a distinguished Southern Senator who is well known to some of us here and whom we all admire and respect.

In that speech he said:

> The founders of our government never intended that public questions should be decided solely on the basis of the number of people involved. They

devised our system of divided powers and checks and balances to avoid any action that smacked of mob rule . . . the founders sought to insulate the Federal judiciary against any form of pressure from any source, but all of you who are members of the bar have read decisions of our highest court which would indicate that a political formula had been applied to reach decisions on constitutional and legal questions.

And a little later he said:

Instead of discharging its proper function as umpire, these decisions, particularly in cases where the executive branch through the Attorney General has intervened, would indicate that the Supreme Court is about to lose its identity as a co-equal branch of our government. The Court has shown much less disposition to protect the prerogatives of the legislative branch than the Congress displayed when the Supreme Court was under attack by the same executive department. Some of the briefs filed by the Attorney General would indicate that he believes that it is the mission of the Court to strike down the rights of the states and of the people reserved in the Tenth Amendment and to transfer them to the central government.

So, that seed which was so planted has so grown that conservative, reasonable, rational men are now of the opinion that the Supreme Court is about to lose its identity as a co-equal branch of our Government, or in other words, about to lose its independence. And that idea is not confined to opinions of the Supreme Court, but like criticism is spreading to opinions of other courts.

It is likely that a major operation will be necessary in order to make it plain to every citizen of this nation that the judiciary was *intended* to be independent; that for the most part it *is* independent; and that it will *remain* independent.

That it was intended to be independent, we all know.

Even before the Constitution, the American colonists were mindful of the problems of judicial selection and tenure. In the Declaration of Independence they declared that the King of Great Britain "has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers, and has made judges dependent upon his will alone, for the tenure of their offices, and the amount and payment of their salaries".

When the Constitution was written and ratified, one of its fundamental principles was that governmental powers should be divided among the three departments of government, the legislative, the executive and the judicial, and that each of those was separate from the others. This separation was not merely a matter of convenience or of governmental mechanism. The object was basic and vital. (*O'Donoghue* v. *United States,* 289 U.S. 516.)

The object has never been more forcibly stated than it was by Chief Justice Marshall during the course of the debates of the Virginia State Convention of 1829-30 when he said:

The judicial department comes home in its effects to every man's fireside; it passes on his property, his reputation, his life, his all. Is it not, to the last degree important, that he (sic) should be rendered perfectly and completely independent, with nothing to influence or control him but God and his conscience? . . . I have always thought, from my earliest youth until now, that the greatest scourge an angry heaven ever inflicted upon an ungrateful and a sinning people, was an ignorant, a corrupt or a dependent judiciary. [88 A.L.R. at page 1025.]

Those who wrote the Constitution were aware of the need for and the establishment of an independent judiciary.

Down through the years, that need has been recognized.

Never has that need been more cogently stated than it was by Justice Robert H. Jackson in his address at the laying of the cornerstone of the new American Bar Center on November 2, 1953:

We believe in a strong and independent judiciary charged with the adjusting and applying of law to conditions of our time, with balancing the values of continuity against those of improvement, certainty against adaptability, liberty against authority. By independence of the judge we mean more than freedom from subservience to other branhces of government. We mean the largest freedom humanly attainable from his own partisanship, class interest, political bias or group pressure. [40 A.B.A.J. 21.]

But, believing, as the authors of the Constitution did, in an independent judiciary, it is noteworthy that they placed the judiciary in a rather peculiar position.

The Chief Executive is chosen by the people—indirectly, of course—but nonetheless, by the people.

The members of the legislative branch, Senators and members of the House of Representatives, are now chosen directly by the people.

But the members of the judiciary are appointed by the Chief Executive by and with the advice and consent of a branch of the legislative department.

True it is that once appointed and confirmed, a federal judge holds office "during good behavior" subject to being removed only by an impeachment and trial by the Senate, *but* his *right to serve* stems from the concurrent acts of the executive department, and a branch of the legislative department.

Is this system conducive to the *continuance* of the independence of the judiciary?

If not, is there a better system? What is it?

These are questions which have excited the attention of the Bar. Not only have they excited the attention of the Bar, but laymen—the press—are thinking of them and discussing them.

Charles Evans Hughes once said:

You cannot maintain democratic institutions by mere forms of words or by occasional patriotic vows. You maintain them by making the institutions of our Republic work as they are intended to work.

That is the watchword of the American Bar Association in the founding of its Section of Judicial Administration. The function of that Section in the program of the American Bar Association is "the improvement of the administration of justice". The objectives of the Association are set out in detail in the recommendations of the Section of Ju-

dicial Administration found in 63 *American Bar Association Reports* 522. To them has been added the subject of improvement of the methods of judicial selection.

That subject is thus stated in the handbook prepared by that Section: "The importance of establishing methods of judicial selection that will be most conducive to the maintenance of a thoroughly qualified and independent judiciary and that will take the *state* judges out of politics as nearly as may be, is generally recognized."

Some of us—a great many of us—have wondered why the proposal was limited to the selection of *state* judges. We presume that the reason is that federal judges have a life tenure and that the method of their selection is governed by the Constitution.

That does not answer the doubt, particularly if this statement of the Section in its handbook is true: "Judges should not be *selected* for partisan or political considerations."

The method of selecting United States Senators has been changed in our lifetime by constitutional amendment.

The possible tenure, *or continuance of tenure,* of the President of the United States has even more recently been the subject of a constitutional change.

The method of electing the President is constantly the subject of debate and discussion, and *possible constitutional change.*

Is the method of selecting federal judges any the more *sacrosanct and immutable?*

If to make the institutions of our Republic better work as they were intended to work, a change in the method of selecting federal judges is desirable, the Bar of the nation, the members of the federal judiciary should be the first to have the courage to say so and to propose such change.

Is the present system conducive to an independent judiciary?

Before passing to a brief analysis of what the present system really is, I should like to advert to a survey made by a New Jersey journalist with respect to their recent editorial comments concerning judicial appointments. He spoke regarding that survey at a meeting of the American Bar Association Committee on Cooperation with Laymen of the Section of Judicial Administration on September 19, 1951. He called attention to the fact that in recent months there had been more than forty sharp criticisms of the federal system of selecting judicial appointees. He quoted the following from an editorial in a Milwaukee paper:

> To the average citizen, the dispute should point up the fact that Federal judgeships shouldn't be matters of political patronage in the first place. Why should either the President or the Senator decide who should be judges on the basis of personal desire or political favor? Why should judgeships get tangled up in political feuds? Why don't we have an impartial body to nominate professionally qualified men for the President's judicial appointments?

After so quoting, he commented:

> Perhaps the concept of extending the Missouri plan to cover the entire Federal judiciary hasn't yet been envisaged by the American Bar Association. It does, however, have widespread support among the press.

Personally, I think this editor missed one point, when he confined himself to criticizing presidential and senatorial selection.

That can be demonstrated by a brief analysis of "what the present system really is".

Theoretically, the President of the United States nominates federal judges by and with the advice and consent of the Senate.

The "nomination" *is* signed by the President. Who in the executive branch of the government actually investigates the character and qualifications of aspirants for federal judgeships? Who actually is the alter ego of the President in that particular phase of work?

If we did not "judicially know" the answers to these questions, the answer would be found in that book which the author denominates a "story of men, emotions, methods and motives in that crucial zone of law and government bordering both upon the courts and the executive" —*Federal Justice* by the Honorable Homer Cummings, former Attorney General of the United States.

Charles J. Bloch has practiced in Macon since 1914. He was President of the Georgia Bar Association in 1944-1945 and has been Chairman of the Judicial Council of Georgia since 1945. He is a member of the Board of Regents of the University System of Georgia.

Succinctly he answers the questions posed when at pages 528-9 he says:

> In an earlier day of fewer judges, the President could handle all routine connected with appointments. Of course members of the cabinet often advised with him on judicial appointments and all manner of judicial matters. . . . It soon became necessary for the President to delegate the routine in connection with appointments. At first this was centralized in the Department of State. So far as law officers and judges were concerned, Attorney General Cushing caused it to be transferred to the Attorney General's office in 1853. . . . Time, practice and the necessities of the case have finally centralized in the Department of Justice the duty of investigating and recommending judicial appointments. There it is performed solely as a confidential service in aid of the President.

So we know from eminent authority, if we did not know it otherwise, that so far as the nomination by the executive is concerned, in the vast, vast majority of cases that nomina-

tion is made on behalf of the President by the Department of Justice. The phrase "Department of Justice" and the title "Attorney General" are practically and legally synonymous. U.S.C.A. Title 5, Section 291; U.S.C.A. Cumulative Supplement Title 5, Section 291 (N). Even prior to the reorganization plan of 1950, the Supreme Court of the United States had conceded it to be the duty of the Attorney General to "supervise the conduct of all suits brought by or against the United States and to give advice to the President and to the heads of other departments of government." (125 U.S. at page 278).

Another case (68 N.E. 2d 750) has stated the authority and duty of the Attorney General to extend to the "general control and supervision of all original prosecutions and all civil suits in which the United States is interested, whether such interest be the subject of attack or defense".

So, the Attorney General of the United States:

(a) Gives advice to the President and the heads of the other departments of the Government;

(b) Supervises the conduct of all suits brought by or against the United States—in some of which the soundness of that advice may be judicially tested;

(c) As a confidential service in aid of the President he investigates and recommends judicial appointments—the appointment of judges to preside in the trial of those cases which he must defend or which he may have instituted.

He pitches; he catches; he bats; he fields; he runs bases; *and*—he selects, or has a great voice in selecting, the umpires.

On June 30, 1953, there were pending in the District Courts of the United States, 66,873 civil cases, of which 23,617 were cases in which the United States was a party. (*Annual Report of the Director of the Administrative Office of the United States Courts for 1953*, page 144.)

During the fiscal year 1953, there were 64,001 civil cases commenced in the United States District Courts, of which 23,881 were United States cases, plaintiff in 17,751; defendant in 6,130. (*Ibid.*, page 148).

During the fiscal year ending June 30, 1953, there were 38,504 criminal proceedings commenced in the United States District Courts. (*Ibid.*, page 171).

On June 30, 1953, there were pending in the United States Courts of Appeals for the eleven circuits, 1845 cases of which 267 were criminal cases and 492 civil cases in which the United States was a party. In addition, there were 369 classified as administrative appeals. (*Ibid.*, page 134).

During the fiscal year ending June 30, 1953, there were filed 603 "petitions for review on writ of certiorari to the Supreme Court of the United States from the United States Courts of Appeals," of which 126 were in criminal cases and 170 in United States civil cases, and 57 administrative appeals.

We do not know in how many cases the Attorney General has been asked to intervene or file briefs as *amicus curiae*, but it takes no more figures to demonstrate that over the years the United States has become the chief litigant in the federal courts.

In *United States* v. *Lee*, 106 U.S. 196, at page 223, Mr. Justice Miller, speaking for the Supreme Court, said: "The judicial department is inherently the weakest of them all." The enforcement and protection of judgments of courts, he pointed out, are dependent upon officers appointed and removable at the pleasure of the executive. "With no patronage and no control of the purse or sword," he continued, "their power and influence *rests solely upon the public sense of the necessity for the existence of a tribunal to which all may appeal for the assertion and protection of rights guaranteed by the Constitution and by the laws of the land, and on the confidence reposed in the soundness of their decisions and the purity of their motives.*"

Day by day, month by month, year by year, cases are increasing in which a citizen of the United States meets in the courts of the United States, the United States as a party litigant.

Will the citizens of the United States continue to have confidence in the soundness of the decisions of these courts and the purity of the motives of these courts when the counsel for the adversary party litigant is vested with so great a power in the selection of the judges of those courts? Will the citizens of the United States continue to regard the judiciary as an "independent judiciary" when its members have practically been nominated by counsel for its chief party litigant?

I have been practicing law in the same city, the same firm for over forty years. During that time, I have tried several cases in United States courts before United States judges in which the United States was the adversary party. I have seen other such cases tried. Never have I had the slightest suspicion that the Presiding Judge was in any manner partial to the United States.

But the problem revolves not around what I and other trained lawyers know, but around what the litigant citizens—laymen—in this day of television, radio and unbridled "freedom of the press"—may think.

Is this "flaw" in the nominating power cured by the provision that the Senate must advise and consent to the nomination before it becomes effective?

A consideration of this question suggests another: Does the Senate really "advise"?

We would shut our eyes to the facts if we pretended ignorance on the subject of "Senatorial courtesy" in judicial appointments insofar as it affects appointments of judges of federal district courts. So, let us steer away from that subject for the present at least, and see what is the present status of "advice and consent" insofar as appointments to the Supreme Court of the United States are concerned.

In 1893, Grover Cleveland was President of the United States. David B. Hill was a Senator from New York in the Senate of the United

(Continued on page 569)

Biggest Regional Meeting Year Opens with Phoenix Meeting April 13—16

■ The most ambitious single year's program of regional meetings yet undertaken by the Association began auspiciously April 13-16 when the Pacific Southwest Regional Meeting was held in Phoenix, Arizona. More than 775 members of the profession registered from the States of Arizona, California, Colorado, New Mexico, Nevada and Utah.

An interesting and instructive series of institutes and seminars, blended with social activities and regional attractions, made the Phoenix meeting one of the most successful regional meetings held thus far.

The Phoenix sessions launched the 1955 Association program of regional meetings. Four such meetings will be held this year, more than in any prior single calendar year. Others are to be in Cincinnati, June 8-11; in Minneapolis-St. Paul, October 12-15; and in New Orleans, November 27-30.

Most judges and lawyers attend regional meetings because they afford exceptional opportunities to hear discussions by top men of the profession in various fields of law. The Phoenix meeting provided an impressive array of these bread-and-butter programs.

The Mineral Law Section, for example, presented a two-day program featuring talks on mining laws as they apply to uranium, the new Atomic Energy Act, and the effect of tax laws on mining operations. The Section of Administrative Law heard a round-table discussion of state administrative rules, procedure and review. The Section of Taxation heard panels on such practical subjects as "Estate Planning under the 1954 Code" and "Drafting Partnership Agreements—A Guide for the General Practitioner".

Altogether there were sixteen such workshop sessions in the three-day meeting. In addition to those mentioned, other Sections and Committees sponsoring programs were: Legal Aid and Lawyer Referral Committees, sponsors of a joint program; Section of Real Property, Probate and Trust Law, Section of Insurance Law, Section of Judicial Administration, Committee on Continuing Legal Education of the American Law Institute collaborating with the American Bar Association, Section of Criminal Law, Section of Corporation, Banking and Business Law, Section of Antitrust Law, Section of Municipal Law, Committee on Traffic Court Program, and the Committee on Public Relations and the Junior Bar Conference, joint sponsors of a public relations workshop.

On the social side, receptions were sponsored by the State Bar of Arizona and the Maricopa County Bar Association. Another highlight was the banquet on the evening of April 15 in the newly completed Thunderbird Room of the Hotel Westward Ho, at which the principal speaker was Dr. Nicholas Nyaradi, Chairman of the Department of Economics of Bradley University, Peoria, Illinois, former Minister of Finance of Hungary.

There were such unusual regional attractions as an air flight over the Grand Canyon, scenic motor tours to copper mines in the Phoenix area and Indian ceremonials. There also was a women's fashion show and luncheon at the Phoenix Country Club, and a Junior Bar Conference dance following the main banquet.

The program had an international flavor. At the opening Assembly session the principal speakers were President Loyd Wright; Chief Justice Campbell McLaurin of the Supreme Court of Alberta; and Eduardo Prieto, Harvard-educated Mexico City lawyer-businessman, who is Vice President of the Cananea Consolidated Copper Co. John D. Randall, Chairman of the House of Delegates, and President Wright jointly presided during the Assembly program on April 14. At the Assembly luncheon the same day Henry F. Holland, Assistant Secretary of State for Inter-American Affairs, delivered a major address on United States relations with Latin-American countries.

Walter E. Craig, of Phoenix, was General Chairman of the Regional Meeting, and Arthur M. Davis, President of the State Bar of Arizona, was Chairman of the Advisory Committee.

An interesting event at the opening Assembly was the recognition of William Mark McKinney of Los Angeles County as the senior American Bar Association member in the Pacific Southwest. Mr. McKinney celebrated his ninetieth birthday February 23, and has been a member of the Association for fifty-eight years.

Vice President Augustan Donovan, of The State Bar of California, presents some law books to William M. McKinney in recognition of his fifty-eight years of membership in the American Bar Association. Archibald M. Mull, of Sacramento, Chairman of the Association's Membership Committee, looks on.

The "Net Worth" Decisions:

Proof of Tax Evasion by Inference

by Harry Graham Balter · *of the California Bar (Los Angeles)*

■ **In a net-worth prosecution for income tax evasion, the Government seeks to ascertain the total amount of the taxpayer's assets at the beginning of the tax period. This figure is compared with his assets at the end of the period and with his income tax returns for the intervening years. An inference of evasion is drawn from any unexplained increases in the taxpayer's fortune. Four cases decided this term by the Supreme Court bestow judicial blessing on this form of proof in income tax cases. Mr. Balter has written a concise analysis of these decisions and of the inherent problem of fairness that they raise.**

■ In 1943 in the case involving Bill Johnson, big-time Chicago gambler, the Supreme Court placed its stamp of approval on the use by the Government in criminal income tax evasion cases of what has become known as the "net worth increase", or "net worth plus expenditures" method of proving undeclared income.[1]

Stated very briefly, this method of proof works as follows:

> In a typical net worth prosecution the Government, having concluded that the taxpayer's records are inadequate as a basis for determining income tax liability, attempts to establish an "opening net worth" or total net value of the taxpayer's assets at the beginning of a given year. It then proves increases in the taxpayer's net worth for each succeeding year during the period under examination and calculates the difference between the adjusted net values of the taxpayer's assets at the beginning and end of each of the years involved. The taxpayer's nondeductible expenditures, including living expenses, are added to these increases, and if the resulting figure for any year is substantially greater than the taxable income reported by the taxpayer for that year, the Government claims the excess represents unreported taxable income. In addition, it asks the jury to infer willfulness from this understatement, when taken in connection with direct evidence of "conduct, the likely result of which would be to mislead or conceal". . . .[2]

In the intervening dozen years since *Johnson*, Department of Treasury agents with increasing tempo have relied on the "net worth increase" method to bolster cases of alleged understatement of income: (1) for civil penalty cases as well as criminal cases, (2) for a check against proof of specified items indicating understatement of income, as well as constituting the primary method of proving undisclosed income, (3) where the taxpayer has books and records which appear to be correct and adequate, as well as where he has inadequate records or none at all, and (4) where the supposed undisclosed income stems from the regular source of a taxpayer's declared income, as well as where the undisclosed income represents another source of income, usually of an unlawful nature.

But, even as the use of the "net worth method" by Treasury became widespread and increasingly effective, tax commentators as well as judges began to express doubts as to whether or not this near-lethal weapon was not in practice depriving taxpayers, especially those embroiled in criminal evasion charges, of some of their basic rights.[3]

The Treasury Department itself became sensitive to this criticism and took the initiative in seeking a Supreme Court review of an adverse ruling by the Court of Appeals for the Ninth Circuit in a tax evasion case where the "net worth increase" method had been relied on in obtaining a conviction in the District Court.[4]

Finally, on December 6, 1954, the Supreme Court handed down separate decisions in four companion cases in each of which the "net

1. *U.S.* v. *Johnson*, 319 U.S. 503 (1943). The Government relied on *expenditures* only to prove undisclosed income. But the same principles would apply to an increase in net worth plus expenditures situation.

2. As stated by Mr. Justice Clark in *Holland* v. *U.S.*, 348 U.S. 1008 (1954).

3. *Demetree* v. *U.S.* (C.A. 5, 1953), 207 F. 2d 892; *U.S.* v. *Fenwick* (C.A. 7, 1949), 177 F. 2d 488; *U.S.* v. *Clark* (D.C. Cal., 1954), 123 F. Supp. 608; Burns and Rachlin, *How To Defend Net Worth Cases*, 32 Taxes 537 (July, 1954).

4. The review by the Supreme Court in the *Calderon* case was sought by the Government after the Ninth Circuit had reversed the conviction. (*U.S.* v. *Calderon*, 348 U.S. 160, 75 S. Ct. 186 (1954).

worth method" of proving unreported income was a primary issue.

The Government won a resounding victory. It prevailed in all four cases. Mr. Justice Clark wrote the opinions in all four cases. Apart from a lone dissent, without comment, in one of the four decisions,[5] Mr. Justice Clark spoke for a unanimous Court.

Obviously the Government had won by a wide margin, with apparently no substantial doubts remaining in the minds of the Justices.

This result is somewhat amazing in view of the rising crescendo of criticism aimed at the widespread use of the "net worth method", especially in criminal evasion cases.

The problems presented to the Supreme Court by these four cases may be stated as follows:

1. Is the use of the "net worth method" of proving unreported income justified in a criminal tax evasion case?

2. May the "net worth method" be used by way of negation where the taxpayer has books and records which he claims are adequate and accurate, and which superficially appear to be so?

3. What degree of proof is required on the part of the Government to establish a valid, or at least *prima facie* opening net worth?

4. To what extent must the taxpayer's own admissions as to his net worth, and its component parts, be corroborated by independent proof; and

5. Does this method of proof unfairly shift the burden of proof to the defendant?

The Court speaks on all these issues and sets out numerous guides, both for the prosecution and for the defense. Yet many problems which have arisen in practice remain perplexing, and if anything, are more perplexing than before the fateful December 6 edicts.

I.

Government's right to use the net worth method in tax evasion cases. While all four cases involve the use of net worth increases, the pivotal decision on these related problems is that of *Holland* v. *United States*.[6]

In this opinion, Mr. Justice Clark (a former Attorney General of the United States with substantial experience in this field) acknowledged that the use of the "net worth increase" method by the Government in a tax evasion case presented different and more difficult problems than that of the normal situation of seeking to establish the elements of an offense by circumstantial evidence:

> In this consideration we assume, as we must in view of its widespread use, that the Government deems the net worth method useful in the enforcement of the criminal sanctions of our income tax laws. Nevertheless, careful study indicates that it is so fraught with danger for the innocent that the courts must closely scrutinize its use.
>
> One basic assumption in establishing guilt by this method is that most assets derive from a taxable source, and that when this is not true the taxpayer is in a position to explain the discrepancy. The application of such an assumption raises serious legal problems in the administration of the criminal law. Unlike civil actions for the recovery of deficiencies, where the determinations of the Commissioner have prima facie validity, the prosecution must always prove the criminal charge beyond a reasonable doubt. This has led many of our courts to be disturbed by the use of the net worth method, particularly in its scope and the latitude which it allows prosecutors. . . .

Mr. Justice Clark then discusses the specific dangers which lurk in the unguarded use of the "net worth method" of proof, namely:

1. The problem of prior accumulated assets:

> Among the defenses often asserted is the taxpayer's claim that the net worth increase shown by the Government's statement is in reality not an increase at all because of the existence of substantial cash on hand at the starting point. This favorite defense asserts that the cache is made up of many years' savings which for various reasons were hidden and not expended until the prosecution period. Obviously the Government has great difficulty in refuting such a contention. However, taxpayers too encounter many obstacles in convincing the jury of the existence of such hoards. This is particularly so when the emergence of the hidden savings also uncovers a fraud on the taxpayers' creditors.
>
> In this connection the taxpayer frequently gives "leads" to the Government agents indicating the specific sources from which his cash on hand has come, such as prior earnings, stock transactions, real estate profits, inheritances, gifts, etc. Sometimes these "leads" point back to old transactions far removed from the prosecution period. Were the Government required to run down all such leads it would face grave investigative difficulties; still its failure to do so might jeopardize the position of the taxpayer.

2. The assumption that increase in net worth represents unreported taxable income:

> As we have said, the method requires assumptions, among which is the equation of unexplained increases in net worth with unreported taxable income. Obviously such an assumption has many weaknesses. It may be that gifts, inheritances, loans and the like account for the newly acquired wealth. There is great danger that the jury may assume that once the Government has established the figures in its net worth computations, the crime of tax evasion automatically follows. The possibility of this increases where the jury, without guarding instructions, is allowed to take into the jury room the various charts summarizing the computations; bare figures have a way of acquiring an existence of their own, independent of the evidence which gave rise to them.

3. The problem of shifting the burden of proof:

> Although it may sound fair to say that the taxpayer can explain the "bulge" in his net worth, he may be entirely honest and yet unable to recount his financial history. In addition, such a rule would tend to shift the burden of proof. Were the taxpayer compelled to come forward with evidence, he might risk lending support to the Government's case by showing loose business methods or losing the jury through his apparent evasiveness. Of course, in other criminal prosecutions juries may disbelieve and convict the innocent. But the courts must minimize this danger.

4. The problem of inferring willfulness from proof of net worth increase:

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5. Mr. Justice Douglas noted his dissent without opinion in the *Calderon* case.
6. 347 U.S. 1008 (1954).

When there are no books and records, willfulness may be inferred by the jury from that fact coupled with proof of an understatement of income. But when the Government uses the net worth method, and the books and records of the taxpayer appear correct on their face, an inference of willfulness from net worth increases alone might be unjustified, especially where the circumstances surrounding the deficiency are as consistent with innocent mistake as with willful violation. On the other hand, the very failure of the books to disclose a proved deficiency might indicate the deliberate falsification.

5. The problem of corroborating a taxpayer's admissions:

In many cases of this type the prosecution relies on the taxpayer's statements, made to revenue agents in the course of their investigation, to establish vital links in the Government's proof. But when a revenue agent confronts the taxpayer with an apparent deficiency, the latter may be more concerned with a quick settlement than an honest search for the truth. Moreover, the prosecution may pick and choose from the taxpayer's statement, relying on the favorable portion and throwing aside that which does not bolster its position. The problem of corroboration, dealt with in the companion cases of *Smith* v. *United States* and *United States* v. *Calderon*, therefore becomes crucial.

6. The problem of allocating net worth increase to the proper years:

The statute defines the offense here involved by individual years. While the Government may be able to prove with reasonable accuracy an increase in net worth over a period of years, it often has great difficulty in relating that income sufficiently to any specific prosecution year. While a steadily increasing net worth may justify an inference of additional earnings, unless that increase can be reasonably allocated to the appropriate tax year the taxpayer may be convicted on counts of which he is innocent.

To the inferior federal courts who must see that the taxpayer receives fair treatment in this dangerous area, the Supreme Court is both sympathetic and cautionary:

While we cannot say that these pitfalls inherent in the net worth method foreclose its use, they do require the exercise of great care and restraint. The complexity of the problem is such that it cannot be met merely by the application of general rules. . . . Trial courts should approach these cases in the full realization that the taxpayer may be ensnared in a system which, though difficult for the prosecution to utilize, is equally hard for the defendant to refute. Charges should be especially clear, including, in addition to the formal instructions, a summary of the nature of the net worth method, the assumptions on which it rests, and the inferences available both for and against the accused. Appellate courts should review the cases bearing constantly in mind the difficulties that arise when circumstantial evidence as to guilt is the chief weapon of a method that is itself only an approximation.

II.

Net worth method may be used to show taxpayer's books are false. Some of the inferior federal courts had hewed to the principle that the "net worth method" ought to be sanctioned only where the taxpayer kept no books or records, or where they were plainly inadequate or inaccurate.[7]

The Tax Court early in 1954 in a civil case rejected this position and since has adhered to the proposition that the "net worth method" is available to the Treasury Department for the very purpose of proving that seemingly regular and adequate books and records, in fact are unreliable or false.[8]

It had been thought that a contrary rule ought to be applicable in a criminal evasion case. But the Supreme Court saw no need to veer from the Tax Court's position:

. . . They [the defendants] claim that Section 41 of the Internal Revenue Code, expressly limiting the authority of the Government to deviate from the taxpayer's method of accounting, confines the net worth method to situations where the taxpayer has no books or where his books are inadequate. Despite some support for this view among the lower courts . . . we conclude that this argument must fail. The provision that the "net income shall be computed . . . in accordance with the method of accounting regularly employed in keeping the books of such taxpayer," refers to methods such as the cash receipts or the accrual method, which allocate income and expenses between years. . . . The net worth technique, as used in this case, is not a method of accounting different from the one employed by defendants. It is not a method of accounting at all, except insofar as it calls upon taxpayers to account for their unexplained income. Petitioners' accounting system was appropriate for their business purposes; and, admittedly, the Government did not detect any specific false entries therein. Nevertheless, if we believe the Government's evidence, as the jury did, we must conclude that the defendants' books were more consistent than truthful, and that many items of income had disappeared before they had even reached the recording stage. Certainly Congress never intended to make Section 41 a set of blinders which prevents the Government from looking beyond the self-serving declarations in a taxpayer's books. . . .

III.

"Opening net worth" need be proved only with reasonable certainty, not absolutely. The key to a successful "net worth increase" case is a reliable opening net worth and the inclusion in this sum of all assets on hand at the opening date. It is not difficult for diligent Treasury

Harry Graham Balter has practiced in Los Angeles since his graduation from the University of California at Berkeley in 1926. He served as Assistant United States Attorney from 1928 to 1933 and is the author of Fraud Under Federal Tax Law. He is a member of the Section of Taxation and edits the Fraud and Negligence Department of the Journal of Taxation.

7. *Jelaza* v. *U.S.*, 179 F. 2d 202 (4th Cir. 1950). *U.S.* v. *Caserta*, 199 F. 2d 905 (3d Cir. 1952). *Pollack* v. *U.S.*, 202 F. 2d 281 (5th Cir. 1953). *Remmer* v. *U.S.*, 205 F. 2d 277 (9th Cir. 1953). *U.S.* v. *Riganto*, 121 F. Supp 158 (D.C. Va. 1954). *U.S.* v. *Clark*, 123 F. Supp. 608. (D.C. Cal. 1954).

8. *Morris Lipsitz*, 21 T. C. 917 (1954).

agents to determine the cost and existence of nearly all assets owned by the taxpayer at a given opening date. The unknown factor is "cash on hand". "Cash in bank" would be neither reliable nor conclusive, because it would leave the taxpayer free at a later date to claim that he had a huge hoard of cash, which is known as the "prior accumulated cash" defense. If believed, "prior accumulated cash" not only destroys the validity of the Government's increase in net worth supposition, but also leaves the taxpayer in a position to urge that his expenditures in later years were made possible not from current—and undeclared—income, but from this accumulated cash hoard earned in the pre-indictment years.

What degree and what quality of proof is required on the Government's part to establish the validity of the list of assets at the opening date and to negate the defense of "prior accumulated cash"—"absolute", eliminating every possibility of error as some courts had urged, or "reasonably certain" as the majority of the courts had held?

The test laid down by the Supreme Court is that of "reasonable certainty", both as to assets at the opening date and as to countering the defense of "prior accumulated cash".

As a corollary, and possibly as a harbinger of some relief from a rule which makes it "tough" for the taxpayer, the Supreme Court imposed a duty on Treasury agents conducting the investigation to make every reasonable effort to track down "leads" offered by the taxpayer in explanation or amplification of his claims as to assets at the opening date, or of "prior accumulated cash".

> While sound administration of the criminal law requires that the net worth approach—a powerful method of proving otherwise undetectable offenses—should not be denied the Government, its failure to investigate leads furnished by the taxpayer might result in serious injustice. It is, of course, not for us to prescribe investigative procedures, but it is within the province of the courts to pass upon the sufficiency of the evidence to convict. While the Government rests its case solely on the approximations and circumstantial inferences of a net worth computation, the cogency of its proof depends upon its effective negation of reasonable explanations by the taxpayer inconsistent with guilt. Such refutation might fail when the Government does not track down relevant leads furnished by the taxpayer—leads reasonably susceptible of being checked, which, if true, would establish the taxpayer's innocence. When the Government fails to show an investigation into the validity of such leads, the trial judge may consider them as true and the Government's case insufficient to go to the jury. This should aid in forestalling unjust prosecutions, and have the practical advantage of eliminating the dilemma, especially serious in this type of case, of the accused's being forced by the risk of an adverse verdict to come forward to substantiate leads which he had previously furnished the Government. It is a procedure entirely consistent with the position long espoused by the Government, that its duty is not to convict but to see that justice is done.

And as a further corollary, the "reasonable certainty" test also applies to the responsibility of Treasury agents to establish that the "net worth increases" are attributable to a source of taxable income. In the absence of reasonable "leads" offered by the taxpayer, which should be tracked down, the Government need not negate all possible sources of non-taxable income.

IV.

Taxpayer's admissions may be used by Government. The taxpayer's oral or written admissions, whether by way of his own net worth statement or otherwise, may be used by the Government to bolster its opening net worth.

Government agents usually attempt to obtain from the taxpayer or his representative a statement as to opening net worth, including absence of prior accumulated cash. The unwary hasten to supply this statement, often in the form of a net worth calculation. Where prosecution for tax evasion follows, the taxpayer's statement—oral or written—turns into a weapon against him. Absent fraud or deceit on the part of the agents who obtained the statement from the taxpayer or his representative, it is admissible in evidence as would be any other admission "against interest" by the accused. So held the Court in the *Smith* case. [9]

While the taxpayer's oral or written admissions as to opening net worth or as to any other relevant issue must be corroborated by independent proof, such corroboration either may be limited to establishing every relevant issue raised in the admission itself, or may reach to relevant proof of other elements of the offense charged, or both.

In a tax evasion case, holds the Court in the *Smith* case, the corroboration required before admissions may be used must be such as to indicate that the particular defendant —not just *someone* as would be true in criminal cases generally—committed the offense of tax evasion.

Since the admission by the taxpayer of assets on hand at the opening net worth date is the cornerstone of the Government's "net worth" case, it is only fair that corroboration be required of such an admission by the taxpayer.

But while the corroboration must be proof independent of the admission itself, this independent proof may be along two lines of approach, cumulatively or in the alternative:

1. Independent proof of the correctness of the admission, limited, however, to the scope of the admission, for example, the opening assets in a net worth analysis when the admission constitutes the net worth computation.

2. Independent proof that the crime of tax evasion was committed by the taxpayer.

If relevant independent evidence on either basis is produced by the Government, there is sufficient corroboration to justify submission of the admission to the jury, together with independent proof.

V.

The burden of proof question. Since the burden of proving the defend-

9. *Smith* v. *U.S.*, 348 U.S. 147, 75 S. Ct. 194 (1954).

ant's guilt beyond a reasonable doubt always remains with the Government in a "net worth" case, the peculiar mechanics of this type of proof present no procedural barrier.

Those who had viewed with alarm the growing use by the Government in criminal tax cases of the lethal weapon of "net worth increase" usually based their criticism on the belief that, in spite of proper instructions to the jury, once the Government put on its proof of "net worth increase", the burden of proof, or at least the burden of going forward with counter-proof, shifted to the taxpayer; that this meant that either the defendant took the stand or otherwise rebutted the Government's proof, or he was certainly in jeopardy of being convicted.

It is disappointing, therefore, to find that the Supreme Court makes short shrift of this contention, almost in a peremptory manner. In all four cases only the following few sentences in the *Holland* decision deal with the burden of proof problem:

> Nor does this rule shift the burden of proof. The Government must still prove every element of the offense beyond a reasonable doubt, though not to a mathematical certainty. The settled standards of the criminal law are applicable to net worth cases just as to prosecutions for other crimes. Once the Government has established its case, the defendant remains quiet at his peril. . . . The practical disadvantages to the taxpayer are lessened by the pressures on the Government to check and negate relevant leads.

Absent a dissent on this issue, the legal profession must assume that this question is free of doubt, at least juridically.

Conclusion. What do these decisions teach us? In this review we have delineated only the broad outlines of the principles announced by Mr. Justice Clark for the Court. A close reading of the manner in which the Court buttresses principles by the detailed recital of the facts which make up the record in each case is both rewarding and disturbing. Disturbing because where it would seem that a stated principle jars our traditional sense of fair play in a criminal trial, Mr. Justice Clark resorts to cautioning trial judges to clothe the defendant with every possible safeguard for a fair trial—directives perhaps more easily stated than followed.[10]

Nonetheless, the following observations as to the immediate impact of these "net worth" decisions may be hazarded:

1. *It is not enough for the Government to have collected proof that an understatement of income has taken place, even though the understatement be substantial.*

No case should be forwarded for prosecution unless there is clear and independent proof of willfulness—deceit, misrepresentation, concealment—at least to the extent that would be required to sustain the imposition of a fraud penalty in a civil case.

Too often the Intelligence Division has been quick to recommend prosecution in the absence of convincing proof of fraudulent conduct on the part of the taxpayer, relying on the inference of willfulness from the size and nature of the deficiency. A stop ought to be put to this practice by directive from the National Office of the Internal Revenue Service.

2. *The entire perplexing problem of whether or not to cooperate with the investigating agents at that level must be reevaluated.*

Time and again misguided tax advisers have handed the agents lethal weapons in the form of "net worth" statements or fragments of damaging information without which the agents could not make a criminal case which would hold up, in the honest but often baseless belief that by doing so the danger of prosecution would disappear. The same holds true for filing amended returns, paying up deficiencies with penalties, etc.

The four Supreme Court decisions dramatize effectively enough the use to which such material will be put—and the weakness of the reed upon which tax advisers have been too prone to lean.

3. *To what extent should tax men take to heart Mr. Justice Clark's suggestion, several times repeated when he faced what appeared to be the giving to the Government of an unfair procedural advantage in the trial of a "net worth" case, to the effect that the Government agents have an obligation to follow through "leads" furnished them by the taxpayer which may destroy or weaken their projected net worth structure?*

If such "leads" are supplied by the taxpayer to the agents they may indeed lead the agents to the information they need to complete their "net worth" case.

Furthermore, how can leads be supplied without opening the door to further and perhaps complete cooperation with all of the known dangers of this course of action? If such leads are not supplied at the Intelligence Division level, will the taxpayer be placed in a weakened position at his trial? Will he be denied the opportunity to urge the relevancy and the probative value of what these leads would have disclosed, not having given the agents a prior opportunity to check them? It would truly seem that the taxpayer is damned if he does and damned if he doesn't.

4. *More than ever it must now be clear that the representation of a taxpayer where fraud—civil or criminal—may be in issue cannot safely be placed in the hands of the inexperienced.*

Each step taken or not taken may ultimately prove to be crucial, for or against the taxpayer. And finally the element of the *timing* of each move on behalf of the taxpayer assumes a place of perhaps top priority in the strategy adopted.

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10. In a recent Tax Court decision, that Court in refusing to sustain the Commissioner's deficiencies based on an increase in net worth computation referred to these cautionary directives by the Supreme Court. *Oscar L. Bowman*, T. C. *Memo.*, 1955-14, CCH Dec. 20-827-M, January 24, 1955.

The Bill of Rights:

Liberty and Law Are Inseparable

by **Herbert Brownell, Jr.** • ***Attorney General of the United States***

▪ Speaking before the New York Patent Law Association last March, Attorney General Brownell took the occasion to redirect the thoughts of his hearers to the fundamental safeguards of liberty embodied in our basic law.

▪ Of all the benefits conferred upon our civilized society, none has been of greater value to our growth and development as a nation than the Bill of Rights. The Constitution has been the framework and backbone of American life; the Bill of Rights its bloodstream, giving life to the ideals of democracy.

When our Federal Constitution proposed a strong central government there was fear that usurpation and oppression would soon replace the newly won freedom. In almost every state convention the Constitution was violently attacked for failing specifically to guarantee individual rights and liberties. In response to these demands, the first ten amendments to the Constitution were adopted. Thus, out of hard and bitter experience emerged the principles which became the Bill of Rights. They represented the hopes of a sturdy people who had just paid a high price to win their independence and were determined to defend and preserve it.

What has distinguished our Bill of Rights is that we have put those rights into practice in our daily lives. They survive today as strong, enduring precepts because we have been able to strike the right balance in reconciling the human rights of man with the public rights of law and order.

The Bill of Rights placed restrictions upon the Federal Government alone—not upon the states. Under them freedom of religion, speech, assembly and the press have been safeguarded, protecting from governmental interference the conscience, the spirit, the minds of men. For the protection of their person, privacy and property, freedom from arbitrary arrest and unreasonable searches and seizures were guaranteed, and life, liberty and property could not be taken away without due process. They secure the basic elements of justice—the right not to be tried for a capital or infamous crime except upon indictment of a grand jury—the right not to be tried twice for the same crime—the right not to give self-incriminating testimony against oneself—the right to a fair trial.

To what extent have these essentials of liberty been realized?

It was no accident that religion was the first of the liberties mentioned by our founding fathers. In Europe, failure to conform to religious beliefs and modes of worship resulted in cruel and inhuman punishment. Again, in the colonies, religious persecution continued. The people were taxed against their will to support state-recognized churches, frequently sects whose tenets they opposed. Failure to attend public worship and opinions designated as heretical were punished severely.

It was not until Roger Williams fled to Rhode Island that full religious freedom was first granted to Christians and Jews alike—even to those without any religious affiliation or belief. Under the laws of Rhode Island it was declared that men of all religions, and men of no religion, should live unmolested so long as they behaved themselves.[1] These laws marked the path of tolerance and brotherhood which America was thereafter to follow.

The First Amendment reflected the views of men like Thomas Jefferson who believed that religion was a matter "which lies solely between man and his God; that he owes account to none other for his faith or his worship".[2]

While the First Amendment guarantees freedom of religion, it may not be invoked as a shield against legislation enacted to preserve an orderly and moral society. Thus, it does not constitute a defense for polygamy, made criminal by act of

1. 2 *Rhode Island Colonial Records* (1664-77) pages 5, 36.
2. 8 *The Writings of Thomas Jefferson* (Wash. Ed. 1861) 113.

Congress.[3] So, too, a statute which prohibits any religious group from parading on the streets without a special license is not an invalid interference with freedom of religion.[4] These cases illustrate the principle limiting the enjoyment of all our liberties. If law and order do not prevail to restrict abuse of liberty by some people, the right would soon be lost to all.

Today, unlike the Communists who are contemptuous of religion and the rights of man, we enjoy the blessings of freedom of religion. We recognize the corresponding duty of practicing our religion in a way that does not interfere with the right of worship by others. We have learned from the experience of other countries how contagious are the corroding effects of religious intolerance.

As in the case of freedom of religion, whether a country provides freedom of speech or of the press to its citizens is not determined so much by what is contained in written documents or laws. Rather, it lies in the hearts, the minds and the conduct of our men and women; in an aspiring mankind for greater freedom and dignity for the individual.

The real test in our daily life is what happens to a member of an unpopular minority when he dares to speak his mind in opposition to the views which are generally accepted by the people. May a man get up on a soap box in a park and criticize the party in power, the Governor or even the President of the United States? May the editor of a newspaper condemn the highest officials of the Government and their policies? Do our teachers have to revise the principles of science or history or economics to conform with the views of some bureaucrat from Washington or his state capitol? May we meet together with other citizens and petition to redress our grievances? May we threaten to vote out of office those officials who disregard the public will? The answer is obvious from daily life around us.

Here we enjoy the right to hold unorthodox opinions and to express them. In this country we may be thankful that the rights of free speech and assembly are not merely slogans to be used at patriotic ceremonies. When we acknowledge freedom of speech and thought we acknowledge as well the freedom to be wrong as well as right. As Judge Learned Hand recently concluded out of his long experience and great wisdom: The principles of civil liberties and human rights lie "in habits, customs—conventions . . . that tolerate dissent and . . . that are ready to overhaul existing assumptions. . . ."[5]

But here again, it is necessary to strike a proper balance between the rights of the individual and the security of the nation. Thus, the guarantees of free speech do not permit communist teachers to spread their poisonous propaganda among school children where it can easily escape detection. While the schools must attract and protect the critical minds, they need not be sanctuaries or proving grounds for subversives shaping the minds of innocent children.

Recently, the Supreme Court, in construing the Feinberg Law of New York, held that membership by a person in an organization listed as subversive by the Board of Regents may properly be used as prima facie evidence of disqualification for employment in the public schools.[6] One of the main constitutional objections to the Feinberg Law was that it violated the First Amendment by creating an atmosphere of fear which would inevitably stifle freedom of speech. The Supreme Court rejected this contention saying that "persons have no right to work for the state in the school system on their own terms". If they do not choose to work under the reasonable terms fixed by the authorities "they are at liberty to retain their beliefs and associations and go elsewhere".[7]

The whole field of the conflict between the rights of the individual with the necessary protection of the security of the country has been difficult for the courts, but one which will be best resolved on a case-to-case basis in recognition of the great principles at stake.

The competing interests to be assessed between the nation's security and freedom of speech also arose in the *Dennis* case.[8] The Smith Act made it unlawful for any person wilfully to advocate the overthrow of the government by force or violence. Convicted defendants claimed that this Act violated guarantees of free speech and free press. The Supreme Court, speaking through Chief Justice Vinson, said that the Act was "directed at advocacy, not discussion";[9] that the right of free speech is "not an unlimited, unqualified right", but must on occasion be subordinated when it poses a substantial threat to the safety of the community.

Cases involving the prosecution of Communists and fellow subversives are seized upon by some as demonstrating that freedom of speech is being sacrificed in an effort to safeguard our security. On the contrary, by placing behind bars those few who have abused their liberty, we save that precious freedom for all others in our society. It is obviously absurd and at odds with all reality, to treat the Communists, who are actively engaged in undermining our government, as innocent students of a seminar in political theory.

Another of our great liberties lies in freedom of the press.

History has shown again and again that a vigilant and courageous press is essential for alerting the people to corruption in government, for combatting crime, poverty, injustice and other social abuses, and for preserving free institutions.

All of us doubtless have our pet dislikes against certain newspaper, radio and television commentators. But we would rather have these commentators unhampered to tell the truth as they see it, however we may disagree with them, than hear them as members of an enslaved propaganda machine who must conform their opinions to the party line. Free-

3. *Davis* v. *Beason*, 133 U. S. 333.
4. *Cox* v. *New Hampshire*, 312 U. S. 569.
5. L. Hand, *A Plea for the Freedom of Dissent*, *N. Y. Times Magazine*, pages 12, 35, February 6, 1955.
6. *Adler* v. *Board of Education*, 342 U. S. 485.
7. *Id.* 492.
8. 341 U. S. 494.
9. *Id.* 502.

dom of the press, like freedom of speech and religion, means and requires freedom for the views we dislike as much as for the views which comport with our own. Unless the press is free to present conflicting views it cannot be free for the whole truth.

If the press is to do its part in keeping the people informed of events in this and other countries, it must have access to pertinent and accurate sources of governmental information. The lid on a good deal of this information has recently been lifted. We are now achieving a sensible balance between the needs of security and the needs of a free press.

For the most recent and direct proof that official channels of information are now open we need only watch President Eisenhower's televised news conference. Almost without restriction the questions and answers are now released to the public.

It reflects his faith in what Mr. Justice Holmes once said: "The best test of truth is the power of the thought to get itself accepted in the competition of the market . . . ."[10]

Can you imagine the head of a communist government or the head of any satellite—iron curtain—nation subjecting himself to a televised audience under the blistering barrage of inquiring reporters who "pull no punches"? Here you have the real difference on a day-to-day basis between the press in a free and slave state.

One of the main purposes of the guarantee of freedom of the press in the Bill of Rights was to prevent previous restraints upon publications such as had been practiced by other governments. But the needs of a free press, as with other rights of freedom, have to be compatible with the rights of the public, its welfare, its safety, its security. Thus, obscene publications or those which present a "clear and present" danger to the public peace or which may tend to subvert the government have been held subject to appropriate penalties.

Statements that might properly be made in times of peace might be so perilous to the country's safety if made in time of war as not to be protected by the Constitution. Under the broadest construction of free speech a man would not be protected "in falsely shouting fire in a theater, and causing a panic".[11] In short, freedom of speech and the press, like others of these rights, do not deny to the Government the primary and essential right of self-preservation.

Freedom of the press must also be reconciled with the need for maintaining the impartial administration of justice. Freedom of the press depends on free and constitutional institutions, such as an uncoerced court and judicial integrity. One of the means of assuring independence to judges is a free press. Neither is more important than the other. Both are indispensable for a free society and for its government. Here, again, we see an accommodation of one set of principles, with another equally important, so that liberty of the press and justice may stand side by side.

The Fourth Amendment, safeguarding against unreasonable searches and seizures, is one of our most important rights. It confers, as against the government, the right of an individual to privacy—"the right to be let alone". In the view of Mr. Justice Brandeis, this was "the most comprehensive of rights and the right most valued by civilized men".[12]

In including the Fourth Amendment in the Constitution, our founding fathers recognized that power is a "heady thing" and that brakes to curb abuse of it must be applied upon overzealous or arbitrary officials. Significantly, the constitution of every state now contains a clause similar to the Fourth Amendment and often uses the identical language. Congress has always carefully respected the rights of privacy protected by the Fourth Amendment.

The Fourth Amendment deters unlawful acts of search and seizure by federal enforcement officers by rendering the fruits of their unlawful actions valueless as a means of conviction. Even in the interest of truth, federal courts will not sanction the use of evidence obtained in violation

Herbert Brownell, Jr.
Attorney General of the United States

of basic right. This is an extraordinary remedy since it frequently furnishes immunity from punishment to the criminal. The application of the Fourth Amendment, therefore, requires careful balancing. On the one hand there is the individual's right of privacy to be considered. On the other hand, there is the conflicting social need for repressing crime.

At an early point in our judicial history the question was raised whether it required an actual entry upon premises and search for, and seizure of, property to offend the Fourth Amendment. Or was the amendment violated when a person was compelled by court order to produce books and papers to be used against him in a criminal proceeding? These questions were answered in the landmark case of *Boyd* v. *United States*,[13] decided in 1886. The Court held that a man's papers were "his dearest property"—and that compulsory production of them was as much an invasion of his constitutional rights as an unlawful search and seizure.

It was in this case that the Court also warned against stealthy encroachments on our liberties. It said: "Illegitimate and unconstitutional practices get their first footing in that

10. *Abrams* v. *United States*, 250 U. S. 616, 630, Holmes J., dissenting.
11. *Schenck* v. *United States*, 249 U. S. 47, 52.
12. *Olmstead* v. *United States*, 277 U. S. 438, Brandeis J. dissenting, page 478.
13. 116 U. S. 616.

way, namely, by silent approaches and slight deviations from legal modes of procedure."[14]

The courts have drawn a distinction between searches which can be carried out without a warrant and those which require one. A search warrant is generally required where there is time to obtain one, before officers may search persons, houses, papers and effects. Mere suspicion is not enough upon which to enter and search premises in the hope of detecting evidence of crime.

The search warrant serves an important function. It permits the objective mind of a judge or magistrate to determine whether the police are right in their claim that law enforcement requires invasion of a man's privacy.

However, there may be emergency situations which will excuse the requirement of a search warrant. For example, search of an auto, ship or other moving vehicle may be made without a warrant where the vehicle might have moved out of the jurisdiction by the time a warrant was obtained. So, too, imminent destruction, removal or concealment of property intended to be seized and other exceptional circumstances have been held to justify a search without a warrant. This does not mean the police have the right to search those lawfully on the public highway. The people have the right to pass through without interruption or search unless a competent official, authorized to search, has probable cause for believing that the vehicles are carrying contraband or illegal merchandise.

In order to protect the individual from the dangers of police abuse, the Supreme Court has held that "a search is not to be made legal by what it turns up. In law it is good or bad when it starts and does not change character from its success."[15]

The Supreme Court has also held that wiretapping does not constitute an unlawful search and seizure under the Fourth Amendment.[16] Presently, however, by act of Congress, evidence obtained through wiretapping is rendered inadmissible even when obtained by federal officers. As the law now stands, it lacks teeth and force against unauthorized eavesdroppers and snoopers. At the same time the existing law puts the Federal Government in a strait-jacket during trial of its internal spies and other enemies since it cannot confront these subversives with intercepted communications. This is an invitation to them to hatch their plots for sabotage over the telephone. The time has come to overhaul this obsolete law. Unauthorized wiretapping should be made a federal crime. Communications intercepted by designated federal officers should be admissible in federal criminal proceedings, under proper safeguards and in specific cases involving the nation's security and defense as well as in other heinous crimes such as kidnapping. This would constitute an accommodation of common sense principles which conserves the public interest as well as the interests and rights of individual citizens.

We come now to the Fifth Amendment. In recent years, the most controversial portion of the Fifth Amendment has involved the privilege against self-incrimination. Under this clause no person may be compelled in any criminal case to be a witness against himself. You have all observed the long parade of witnesses in the courts, before grand juries, and before various congressional bodies, refusing to furnish evidence vital to the security of the nation and the welfare of its people, on the ground that to do so would tend to incriminate them.

This privilege against self-incrimination has been construed so that one is not deemed a witness against himself if he is immunized against prosecution for crimes about which he is compelled to testify.

It is my opinion that it is more important to the nation's welfare to obtain information of Communist ring-leaders, their chief subordinates, their key plans, their locations as well as other information essential to the security of the country, than it is to send some minor henchmen to jail. Last year I strongly urged to the Congress that it enact a law which would confer immunity from prosecution upon certain persons in exchange for the desired testimony. Such a law was passed.[17] I should like to tell you briefly how it works.

Under it, either House or any of their committees or joint committees may grant immunity to a witness after first notifying the Attorney General and securing the approval of a United States District Court in which the inquiry is being conducted. The Attorney General is given an opportunity to be heard on the application prior to decision by the court. In proceedings before grand juries and courts involving the national security or crimes of a subversive nature, similar immunity authority is conferred. In these instances, if the United States Attorney determines that the testimony of a witness who has claimed his privilege is necessary to the public interest, the prosecutor must seek the approval of the Attorney General for a grant of immunity. Then he may apply to the court for an order directing the witness to testify and produce evidence. Upon the entry of such an order the witness receives complete immunity from future prosecution for any matter about which he was compelled to testify. In exchange for this immunity he must testify, otherwise be held in contempt of court.

As you can see, this statute is attended by adequate safeguards and constitutes a reasonable compromise to this important problem. It furnishes the Government information essential to its security. At the same time it satisfies the purposes of the Fifth Amendment of preventing a person from being convicted by his own involuntary testimony.

The rights of an accused in a criminal case to procedural due process stem from centuries of experience. This experience teaches that these rights would be unsafe in the hands of inquisitorial proceedings. Such proceedings are the trademark of the

14. *Id.* 635.
15. *United States* v. *DiRe*, 332 U. S. 581, 595.
16. *Olmstead* v. *United States*, 277 U. S. 438.
17. P. L. 600, 83d Cong., 2d Sess. approved August 20, 1954.

communist slave state where they have apparently patented the process, and have extended it through a compulsory licensing system for each of their satellites. These are precisely the practices which our founding fathers sought to protect against when they adopted the Sixth Amendment in the Bill of Rights.

The Sixth Amendment contains important specific procedural safeguards for securing justice which supplement those of the Fifth Amendment. The accused in a criminal prosecution has the right to a speedy and public trial. He has the right to be tried by an impartial jury where the crime was committed. He is to be informed of the nature and cause of the accusation—to be confronted with witnesses against him—to have process for obtaining witnesses in his favor—to have assistance of counsel for his defense. The Eighth Amendment bars excessive bail and fines as well as cruel and unusual punishment.

By these provisions it was intended that justice shall prevail and that all people would stand on an equal footing before the law—the weak, the helpless, the poor, as well as the strong and powerful.

A controversy presently exists as to how far these procedural safeguards of criminal justice shall be carried over in administrative proceedings, such as the Government's employee security program, where no criminal sanctions are involved.

In the area of criminal law, the existing system of assigning counsel to represent defendants without means falls far short of compliance with the spirit of the Sixth Amendment. Voluntary acceptance of assignments as defense counsel, without compensation, is as outmoded as a volunteer fire department in a modern society. It is neither adequate nor fair to impose this burden on a small number of the Bar. We shirk our community responsibility, where we fail to furnish full-time paid counsel, trained in criminal law techniques, to represent the poor charged with crime. To give real meaning to the Sixth Amendment, I recently renewed my recommendation that Congress authorize public defenders to represent indigent defendants in criminal cases in the federal courts.

When the glorious history of the Bill of Rights and the decisions construing it in this country are compared to the darkened history of human rights in communist-controlled countries, it lights the way to how liberties are won and how they are lost—how we may avoid the dangers of a police state and how we may continue to enjoy the blessings of a free state.

You may rightfully ask what is the proper role which the Attorney General may play in protecting the Bill of Rights for the people.

First, no higher duty rests upon him than of translating each provision of the Bill of Rights into a concept of living law so that justice will be done to all our citizens. His is a dual function: That the innocent shall not suffer, and the guilty shall fairly and fearlessly be prosecuted.

Second, he must endeavor by his own example to maintain in our free people a respect for law and order as essential to their continued liberty. As legal adviser to the President he must take every precaution that executive action is within the bounds and restraint of law—he must take no less care that the rightful prerogatives of the Executive remain unimpaired.

Third, he must always be seeking to establish and preserve highest standards in the administration of justice throughout the land. This objective he may achieve through careful selection of lawyers and other officials of integrity to represent the Government; in recommending the most honest and superior persons as federal judges; and in adoption of procedures which will end delay and obstruction of the course of justice.

Fourth, he must continue to seek ways of deterring crime; of rehabilitating criminals so they can be returned to society as useful citizens; and of making special provisions for youthful offenders so that they do not become hardened criminals.

Fifth, he must cooperate with other officials and all other persons in making democracy workable and in helping to secure life, liberty and the pursuit of happiness for the American people.

To these tasks I shall devote all my efforts in the firm belief that liberty and law are inseparable and that a balanced judgment reconciling the needs of each is essential to preserve them for the free people of this country.

Announcement of 1955 Award of Merit Competition

■ The 1955 Awards of Merit will be made to the state and local bar associations reporting the most outstanding activities, other than administrative or routine, initiated or reaching full development since September 1, 1954.

July 10 is the *final date* for filing entries. Application forms and further information may be secured from the Headquarters of the American Bar Association, American Bar Center, Chicago 37, Illinois .

78th Annual Meeting:

Summary of Program

■ **One of the most outstanding programs ever presented for members of the legal profession is being arranged for the 78th Annual Meeting of the American Bar Association in Philadelphia August 22-26.**

The dramatic highlight of the program will be an open air Assembly session on historic Independence Mall at which the President of the United States and the Chief Justice are scheduled speakers. This session will be the focus of the national observance this year of the bicentennial anniversary of the birth of the great Chief Justice, John Marshall. President Eisenhower has authorized announcement of his tentative acceptance of the invitation to be the principal speaker at the ceremonies in which the Association is cooperating with the John Marshall Bicentennial Commission, under the chairmanship of Chief Justice Warren.

Preceding this afternoon program, on Wednesday, August 24, there will be a luncheon served outdoors on the Mall for all Association members and their wives attending the meeting. President Eisenhower also is expected to attend the luncheon.

In all, five Assembly sessions will be held. On Thursday, August 25, speakers will be the Right Honorable Lord Justice Denning of England and President D. Park Jamieson of The Canadian Bar Association. The Assembly sessions, other than the program on the Mall and the annual dinner, will be held in the Forrest Theater. Sessions of the House of Delegates will be in the Ballroom of The Bellevue-Stratford daily from Monday, August 22, through Friday, August 26.

Programs of exceptional quality also are being prepared for Committees, Sections and a number of affiliated organizations. They deal primarily with current developments in the law; a glance through the program outlines that follow will indicate to members of the Association how valuable attendance at the Annual Meeting can be. Such timely subjects as the proposed National Highway program, the Hoover Commission report, the roles of lawyers and accountants in representation of taxpayers, and legal aspects of atomic energy development are among those to be covered in Section discussions. The programs are dotted with names of distinguished speakers.

Early registrations for the Philadelphia meeting have been heavy, but the Reservations Department of the Association in Chicago will be able to accommodate all who wish to attend. Now is the time, however, to make reservations to be assured of hotel accommodations.

The **National Lawyer Referral Services Conference** will be held Sunday afternoon, August 21, at The Bellevue-Stratford. There will be a joint luncheon of the **Committee on Lawyer Referral Service** and the **Committee on Legal Aid Work** at The Union League Tuesday, August 23. Former Senator George Wharton Pepper will be the principal speaker.

The **Special Committee on Traffic Court Program** has planned sessions at the Hotel Sylvania for all day Tuesday and Thursday morning, August 23 and 25. Various reports will be given Tuesday morning and the afternoon will be devoted to the following topics and speakers: "Review of Standards for Traffic Courts Adopted in 1940", James P. Economos, Director of the Association's Traffic Court Program, Chicago; "Juvenile Traffic Violators—How Should They Be Handled by the Traffic Courts?", Judge Thomas M. Powers, Municipal Court, Akron, Ohio, and Judge Roger Alton Pfaff, Municipal Court, Los Angeles, California; "Juvenile Traffic Violators—How Should They Be Handled by the Juvenile Courts?", Judge Lorna E. Lockwood, Superior Court, Maricopa County, Phoenix, Arizona, and Judge Philip B. Gilliam, Juvenile Court, Denver, Colorado. Thursday morning there will be a conference for lawyers interested in traffic transportation, highways, traffic safety, traffic enforcement and traffic courts sponsored by the Traffic Court Committee.

The seventeen Sections of the American Bar Association will all have special programs during the meeting. It is not possible to give all the details of these meetings here and only a few of the events are mentioned.

The **Section of Administrative Law** will hold its meeting at The Warwick. General sessions of the Section will be held Monday afternoon, August 22, and all day Tuesday, August 23. A joint breakfast with the Federal Bar Association is scheduled for Tuesday morning. The subject for discussion at this breakfast will be "The Report of the Hoover Commission".

The **Section of Antitrust Law** will hold all of its meetings at the Adelphia Hotel with the exception of a joint meeting with the Section of Patent, Trade-Mark and Copyright Law to be held at The Warwick on Monday afternoon, August 22. This will be a symposium on Chapter V, "Patent-Antitrust Problems" of the report of the Attorney General's Committee. General sessions of the Section will be held Tuesday and Wednesday mornings, August 23 and 24. The Tuesday session will include analysis of the following chapters of the report of the Attorney General's Committee: I. "A Policy Against Undue Limitations on Competitive Conditions"; II. "Trade or Commerce with Foreign Nations"; III. "Mergers". A luncheon is scheduled for Tuesday in honor of Judge Stanley N. Barnes and Professor S. Chesterfield Oppenheim. Following the luncheon a brief analysis of highlights of judicial, administrative and legislative antitrust activity during the year will be given by Thomas E. Sunderland, of Chicago, who is the Section Delegate to the House of Delegates. The Wednesday morning session will include analysis of the following chapters from the report of the Attorney General's Committee: IV. "Antitrust Policy in Distribution"; VI. "Exemptions from Antitrust Coverage"; VII. "Economic Indicia of Competition and Monopoly"; VIII, "Antitrust Administration and Enforcement".

The **Section of Bar Activities** meeting at The Bellevue-Stratford, will hold general sessions on Monday afternoon, August 22, and Wednesday morning, August 24. The Committee on Award of Merit will meet Saturday noon, August 20.

The **Section of Corporation, Banking and Business Law,** meeting at The Bellevue-Stratford, will hold general sessions on Monday and Tuesday, August 22 and 23. The Monday session will include an address by L. C. B. Gower, Exchange Professor at the Law School of Harvard University from the London School of Economics, on the topic "Business Corporations—Some Contrasts Between English and American Law". There will also be a debate on "Mandatory Accumulative Voting for Directors" by Whitney Campbell, of Chicago, Illinois, and George Gibson, of Richmond, Virginia, followed by an address on "Staggered Terms for Directors" by Leonard D. Adkins, of New York City. Tuesday morning there will be a panel discussion on "Banking Experiences in Pennsylvania under the Uniform Commercial Code", which will be led by Carl W. Funk, of Philadelphia. Tuesday afternoon there will be a description of "Montgomery Ward Proxy Battle" by active participants. The Division of Food, Drug and Cosmetic Law will hold a meeting at the University of Pennsylvania Law School on Tuesday morning and afternoon.

The **Section of Criminal Law** will hold all of its meetings at the Hotel Sylvania. General sessions of the Section will be held Monday afternoon, August 22, all day Tuesday, August 23, and Wednesday morning, August 24.

All activities of the **Section of Insurance Law** will be held at the Benjamin Franklin Hotel. The meeting will open with a luncheon Monday noon, August 22. Immediately following the luncheon, general sessions will begin. Harry G. Waltner, Jr., of New York City, will speak on "The New York Disability Benefits Laws—The First Five Years". Then to be presented is an outstanding medico-legal seminar upon the topic "Relationship Between Trauma and Malignance". Participants include Raoul D. Magana, Los Angeles, and William F. Martin, New York City, legal experts; A. Reynolds Crane, M.D., Chief Pathologist of the Pennsylvania Hospital, and N. Volney Ludwick, M. D., Professor of Radiology, Hahneman Medical College and Hospital, medical experts. Tuesday morning will be highlighted by a discussion on "Proposed Amendments to Federal Court Rules" led by Richard W. Galiher, of Washington, D.C.; Walter B. Humkey, of Miami, and Charles F. Short, Jr., of Chicago, will participate. Some of the other subjects and speakers scheduled for Tuesday include "Notice—Its Place in Fidelity Insurance" by Francis L. Kenney, Jr., of St. Louis; "Surety's Salvage Sources" by Mark N. Turner, of Buffalo; "Property Damage Claims Arising from Low Flying Aircraft" by Hamilton O. Hale, of New York City; "Increase of Hazard as a Defense Under a Fire Insurance Policy" by Donald N. Clausen, of Chicago, and "Fire Insurance Problems in the Atomic Age" by Ambrose B. Kelly, of Providence. In connection with automobile insurance law, John P. Faude, of Hartford will speak on "Coverage—Insuring Agreements and Exclusions", and De Roy C. Thomas, of New York City, on "Other Provisions—Declarations and Conditions". Donald Knowlton, Insurance Commissioner of New Hampshire, will speak on "Jurisdiction of the Federal Trade Commission Over Trade Practices of Insurance". On Wednesday morning, Wayne E. Stichter, of Toledo, will conduct a trial tactics panel to include discussion on the use of certain discovery procedures, *viz*: oral depositions; written interrogatories; demands for admissions; motions for production and inspection before trial; motions to require injured party to submit to examination by doctors, also, when and under what circumstances, and at what stage of the case defendant should admit liability. This trial tactics panel will be moderated by Gerald T. Foley, Judge of the County Court of Essex County, New Jersey, and participated in by Tracy E. Griffin, of Seattle, Washington, Josh H. Groce, of San Antonio, Texas, James M. Guiher, of Clarksburg, West Virginia, and William A. Kelly, of Akron, Ohio. Various committee breakfast meetings have been scheduled for Monday and Tuesday mornings. The reception and dinner-dance will be held Tuesday evening.

The **Section of International and Comparative Law,** meeting at The Bellevue-Stratford, will hold general sessions on Tuesday, August 23, following the traditional comparative law breakfast at 8:00 A.M. which is also scheduled for The Bellevue-Stratford. The breakfast Chairman is John N. Hazard and the speakers will be Jacob M. Lashly, of St. Louis, and Benjamin Busch, of New York City. Their topics will be "Contrasting Approaches to the Employment Rights of United Nations Staff Members" and "Current Foreign Law Problems in the Courts". The annual joint luncheon with the Junior Bar Conference will be held at The Union League Tuesday noon. Tentative plans for speakers include a prominent United States official active in foreign policy and a well-known British judge. Late Tuesday afternoon the Inter-American Bar Association, in cooperation with the Committees on Relations with International Bar Organizations and on Cooperation with the Inter-American Bar Association, will hold a reception for distinguished guests at The Bellevue-Stratford.

The activities of the **Section of Judicial Administration** scheduled for The Bellevue-Stratford include the Annual Dinner in honor of the Judiciary of the United States on Monday evening August 22 at which Dag Hammarskjold, Secretary General of the United Nations, will speak on "Law and Liberty in International Life". The luncheon for federal and state judges is scheduled for Tuesday noon, August 23. General sessions of the Section will be held Monday afternoon, all day Tuesday and Thursday morning. On Wednesday morning there will be a conference sponsored by the Committee on Cooperation with Laymen. At the Monday afternoon session the work of the state committees and their accomplishments in the promotion of the Minimum Standards of Judicial Administration will be discussed. The Tuesday morning session will be devoted to a demonstration of "Pre-trial in State Courts", under the direction of Clarence L. Kincaid, Judge of the Superior Court of Los Angeles, member of the Judicial Council of California and Chairman of the Section's Committee on Pre-trial.

The activities of the **Junior Bar Conference,** most of which are scheduled for the Hotel Sylvania, include a breakfast for members and their guests on Saturday, August 20, at which William J. Fuchs, of Philadelphia, will give the address of welcome. General sessions will be held on Saturday and Sunday. E. Smythe Gambrell, the President-nominee of the Association, will speak at a luncheon Saturday noon. Immediately following there will be a workshop meeting for delegates from state and local groups. On Sunday there will be a breakfast followed by a Council meeting. At noon, Robert B. Meyner, Governor of the State of New Jersey, will speak at a luncheon. A reception and buffet supper have been scheduled for Sunday evening at a Philadelphia Main Line estate. The traditional reception and dinner dance will be held Saturday evening at The Drake Hotel. The debate on personal finance law is scheduled for Monday afternoon and the joint luncheon with the Section of International and Comparative Law Tuesday noon at The Union League.

The **Section of Labor Relations Law** will hold all its meetings at The Drake. A general session Monday afternoon, August 22, will include a report of the Committee on State Labor Legislation by the Chairman, Professor Donald H. Wollett, School of Law, University of Washington; "Two Years of 'New' NLRB", Professor W. Willard Wirtz, Northwestern University School of Law, and "Labor and the Antitrust Laws", Professor Douglass Brown, Massachusetts Institute of Technology. A report of the Committee on National Labor Relations Act, Louis Sherman, Chairman, and a report of the Committee on National Labor Relations Board Practice and Procedure, Robert Littler, Chairman, will be given at the Tuesday morning session, August 23. A luncheon honoring members and General Counsel of the National Labor Relations Board will be held Tuesday noon. The final general session in the afternoon will consist of a forum on the subject "Legislative Restrictions Upon Union Security Agreements", and will be followed by a reception.

The **Section of Legal Education and Admissions to the Bar** will conduct sessions jointly with the **National Conference of Bar Examiners** on Monday afternoon and Tuesday morning. On Monday the National Conference of Bar Examiners will have a panel discussion on "Information Please Workshop". Shelden D. Elliott, of New York University School of Law and Institute of Judicial Administration, will moderate. The panel members include John T. DeGraff, President, New York State Board of Law Examiners; Goscoe O. Farley, Secretary, California Committee of Bar Examiners; Franklin P. Hepburn, Chairman, Committee on Character and Fitness, State of Michigan; Len Young Smith, President, Illinois State Board of Law Examiners. A social hour has been scheduled for the evening. Tuesday morning there will be a panel discussion on "The Need for, and Work of, Cooperating Committees Among Bar Examiners, the Bench and the Law Schools". There will also be an address by Olin E. Watts, Chairman, Florida Board of Law Examiners. Arthur T. Vanderbilt, Chief Justice of the Supreme Court of New Jersey, will be the speaker at the joint luncheon scheduled for Tuesday noon. In the afternoon the Section will hold its annual meeting, at which there will be a panel discussion on "Academic Gown and Judicial Robe". Dean F. D. G. Ribble, University of Virginia School of Law, will be the moderator, and Herbert F. Goodrich, Judge of the United States Court of Appeals for he Third Circuit, and Justice Walter V. Schaefer, Supreme Court of Illinois, will participate.

The general Sessions of the Sec-

tion of Mineral Law are scheduled for the Hotel Adelphia, Tuesday and Wednesday, August 23 and 24. There will be a reception late Tuesday afternoon for Section members at The Bellevue-Stratford.

The **Section of Municipal Law** will meet at The Barclay. Regular sessions of the Section will be held on Sunday, Monday and Tuesday. One or more sessions will be devoted to the subject of "Home Rule for Cities". A luncheon is being planned for Section members Tuesday noon. Prominent speakers will include Walter A. Schmidt, President of the Investment Bankers Association, Philadelphia, and Austin J. Tobin, of the Port of New York Authority, New York City.

The **Section of Patent, Trademark and Copyright Law** will hold all of its sessions at The Warwick with the exception of Sunday, August 21, when they plan to move to Chalfonte-Haddon Hall, Atlantic City, New Jersey, for one day. Saturday noon, August 20, the International Patent and Trade-Mark Association will hold its annual business meeting luncheon, and they have scheduled another luncheon on Tuesday. A symposium on copyrights is planned for Saturday afternoon. On Sunday in Atlantic City the program will consist of a symposium on trade-marks in the morning followed by a luncheon given by The United States Trade-Mark Association. General sessions of the Section will be held Monday afternoon, all day Tuesday and Wednesday morning, August 22, 23 and 24. The meeting Monday afternoon will be a joint session with the Section of Antitrust Law and will be highlighted by a panel discussion on "Patents and Antitrust Laws". Patent Commissioner Robert C. Watson will be the principal speaker at the Tuesday morning session. The National Council of Patent Law Associations has planned a breakfast for Monday morning and a reception and dinner are planned for the Section Tuesday evening.

The annual meeting of the **Section of Public Utility Law** will be held at The Barclay. On Monday afternoon there will be a panel discussion on the developments during the year in the several fields of public utility law. Several lawyers prominent in utility practice will discuss the changes occurring in their various fields. At the Tuesday morning session, several speakers will explore the legal aspects of atomic power. Addresses will be given on the proposals for the licensing of atomic power projects from the point of view of the Atomic Energy Commission, as well as from the point of view of a utility engineering group. Other leaders in the field will comment on changes in legislation relative to atomic energy, and the impact of atomic energy internationally as well as locally, both on regulated utilities and equipment manufacturers. Tuesday afternoon will witness a discussion of problems arising under the National Highway Program. Addresses will be given on the subject of the relocation of utility facilities, the effect upon municipalities and the effect upon utility customers. The Wednesday morning session will be devoted to a consideration of legal problems in the transportation field. Papers will be delivered on competitive rate making, deregulation from the shippers' viewpoint and a comparison of British, Canadian and American transport rate regulation. The meeting will close with the annual dinner-dance Wednesday evening.

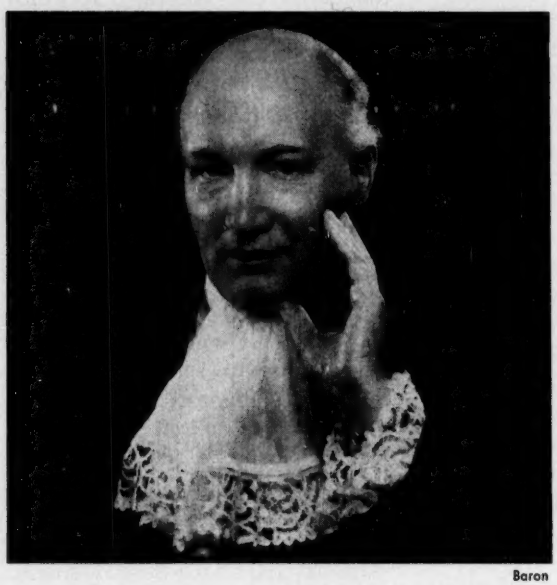
The **Section of Real Property, Probate and Trust Law,** meeting at the Hotel Adelphia, will hold division sessions on Monday afternoon, August 22, Tuesday morning, August 23, and Wednesday morning, August 24. The Real Property Law Division will meet on Monday at which time the program will deal with real property developments in modern America. On Tuesday morning the Probate Law Division will have several outstanding speakers on the problems in drafting parallel wills. The Wednesday morning session will be devoted to a meeting of the Trust Law Division at which there will be a "how to do it show" on drafting wills on short notice, drafting short term trusts, and payments of life insurance proceeds to testamentary trustees. This session will be followed by the annual meeting of the Section. A reception and dinner is being planned for Tuesday evening at a local country club.

The **Section of Taxation** will hold all of its meetings at The Benjamin Franklin, with the exception of Monday afternoon and all day Tuesday, August 22 and 23, when regular sessions will be held at The Bellevue-Stratford. The other regular sessions of the Section will be held all day Saturday and all day Sunday, August 20 and 21, with luncheons scheduled at noon both days. David W. Kendall, General Counsel of the United States Department of the Treasury, will be the principal speaker at the Saturday luncheon, and Erwin N. Griswold, Dean of the Harvard University Law School, will speak on the subject of "Lawyers and Accountants in Tax Practice", at the luncheon on Sunday. A special session on Wednesday will be devoted to a "Demonstration of a Tax Case". The annual dinner dance of the Section has been scheduled for Saturday evening at the Philadelphia Country Club.

Among the affiliated organizations holding meetings during the time of the American Bar Association meeting will be the **American Judicature Society,** which will hold a luncheon on Thursday, August 25, in The Bellevue-Stratford; the **American Law Student Association** will meet starting Saturday, August 20 through Thursday, August 25, at the Penn-Sherwood Hotel; the **National Conference of Commissioners on Uni-**

form State Laws will meet from August 15 through Saturday, August 20, at The Bellevue-Stratford; the **National Conference of Bar Presidents** will meet at The Bellevue-Stratford on Saturday and Sunday, August 14 and 15. There will be numerous meetings of law school alumni associations and legal fraternities.

A complete schedule of meetings will appear in the Program of the Annual Meeting which will be mailed to all members of the Association about the first of August.



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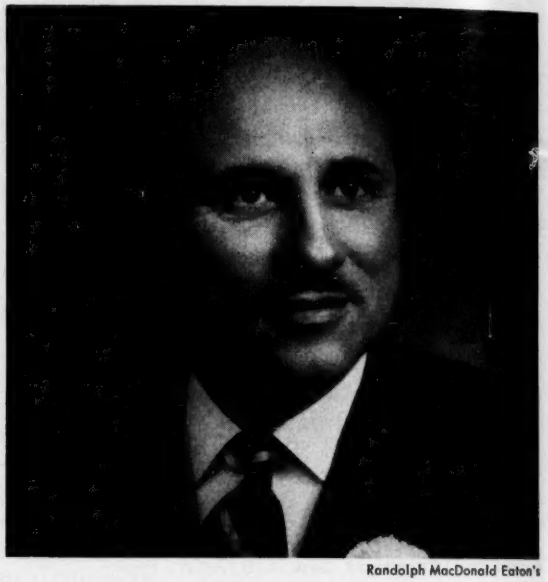
Lord Justice Denning



Randolph MacDonald Eaton's

David Park Jamieson

Two Distinguished Guests at the Annual Meeting

■ Lord Justice Denning, who will be the representative of the English Bench and Bar at Philadelphia, is a Lord Justice of Appeal and presides over one of the Courts of Appeal daily.

Now 56, he was educated at Magdalen College, Oxford, and took a first class in mathematical moderations, a first class in the final mathematical school, and a first class in the final school of jurisprudence. He was called to the Bar in 1923 after having been the Eldon Scholar in 1921 and Prize Student of the Inns of Court. He was made King's Counsel in 1938 and a judge of the High Court in 1944. In 1948, he was made a Lord Justice of Appeal and a member of the Privy Council. After the last war, he was nominated as the judge to hear pension appeals by ex-servicemen.

Lord Justice Denning is the Chairman of the Society of International and Comparative Legislation and recently published a collection of his lectures under the title of *The Changing Law*. He is the joint editor of the 1929 edition of *Smith's Leading Cases*. In 1949, he delivered a series of lectures known as the Hamlyn Lectures, and these were published under the title *Freedom Under the Law*.

Lord Justice Denning will be accompanied by his wife and son on his visit to the United States.

David Park Jamieson, M.B.E., Q.C., LL.D., President of The Canadian Bar Association, was born at Forest, Ontario, in 1903. He attended public schools at Galt and Sarnia and the Sarnia Collegiate Institute. Articled as a student-at-law to John R. Logan, Q.C., in 1919, he was called to the Bar of Ontario in 1924. From 1921 to 1924, he attended Osgoode Hall in Toronto. He has practiced in Sarnia since 1924, and has been a Queen's Counsel since 1945.

He was elected a Bencher of the Law Society of Upper Canada in 1946 and was re-elected in 1951. He is Chairman of the Public Relations Committee and Vice Chairman of the Legal Education Committee of that society.

A member and past president of the County of Lambton Law Association, he has been a member of the Canadian Bar Association since 1925.

In 1954, he received the honorary degree of Doctor of Laws from the University of New Brunswick.

Mr. Jamieson served with the Royal Canadian Air Force from 1941 to 1945, retiring with the rank of wing commander. He was Deputy Director of Personnel, Air Force Headquarters and a member of the Canadian Air Liaison Mission to India and Southeast Asia.

A frequent contributor to The *Canadian Bar Review* and other legal periodicals, Mr. Jamieson is a member of the Council of the Survey of the Legal Profession in Canada and is active in Conservative politics.

Activities of Sections and Committees

SECTION OF ANTITRUST LAW

■ The 1955 Spring Meeting of the Section of Antitrust Law, held as usual in Washington, D. C., opened with a cocktail party and dinner on March 31. There was a record-breaking attendance of 667.

William Simon, Chairman of the Section, opened the dinner meeting and then introduced Assistant Attorney General Stanley N. Barnes, who presided as toastmaster. Supreme Court Justice William O. Douglas and Attorney General Herbert Brownell, Jr., gave short, impromptu addresses. Others at the speakers' table included Supreme Court Justice Sherman Minton, Edward F. Howrey, Chairman of the Federal Trade Commission, and other members of the Commission, the Attorney General's staff and others.

The Attorney General's National Committee To Study the Antitrust Laws had reported that very day. The Co-Chairmen of the Committee were Judge Barnes and S. Chesterfield Oppenheim, and there were over sixty leading judges, lawyers, teachers and others on the Committee. One of the highlights of the dinner program was the playing of a recording of a fictional Conference of the Committee.

The following day, April 1, an all-day session was devoted to discussion of trade associations. Mr. Simon presided in the morning and Fred E. Fuller in the afternoon. H. Thomas Austern was Coordinator, and among others on the program were Edward F. Howrey, Chairman, Federal Trade Commission, and Stanley N. Barnes, Assistant Attorney General, Antitrust Division.

In addition the program included the following lawyers with the Government and in private practice: George P. Lamb, Philip A. Ray, Glen McDaniel, Albert S. Barney, Fred Ballard, Malcolm K. Whyte, H. Graham Morison, Malcolm I. Ruddock, William C. Kern, Ephraim Jacobs, Jack I. Levy, John F. Baecher, Charles E. Grandy, William W. Corlett, Henry P. Fowler and Ross Shumaker.

At a meeting of the Section Council, March 31, it was concluded to devote the August Annual Meeting program of the Section in large part to a discussion of the report of the Attorney General's Antitrust Committee.

COMMITTEE ON TRAFFIC COURT PROGRAM

■ At the Southwest Regional Meeting of the American Bar Association, held at the Hotel Westward Ho, Phoenix, Arizona, April 12 through 16, 1955, Loyd Wright, President of the America Bar Association, received a check in the amount of $10,000 from Albert E. Spottke, Vice President of Allstate Insurance Company, in support of the Traffic Court Program sponsored by the American Bar Association.

Others present at the time of the formal presentation of this check were E. Smythe Gambrell, American Bar Association nominee for President, and Whitney R. Harris, American Bar Association Executive Director.

Mr. Spottke, in the presentation, stated as follows:

> It is our pleasure to present this draft for $10,000 from The Allstate Foundation in support of the Traffic Court Improvement Program sponsored by the American Bar Association. The needs for improvements in this area are tremendous, and so we are interested in aiding this worthy endeavor.
>
> Our main concern is that the magnitude of this problem requires much more time, effort and money than is now being expended. The demands

(Continued on page 546)

President Wright receives $10,000 check from Albert E. Spottke, of Allstate Insurance Company, at the Southwest Regional Meeting. Left to right are E. Smythe Gambrell, President Wright, Whitney R. Harris, and Mr. Spottke.

AMERICAN BAR ASSOCIATION

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EDITORIAL OFFICES

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Signed Articles
As one object of the *American Bar Association Journal* is to afford a forum for the free expression of members of the Bar on matters of importance, and as the widest range of opinion is necessary in order that different aspects of such matters may be presented, the editors of the *Journal* assume no responsibility for the opinions or facts in signed articles, except to the extent of expressing the view, by the fact of publication, that the subject treated is one which merits attention.

■ *Important Reports on Administrative Law*

In recent years no branch of the law has commanded the attention of the profession in a greater degree than administrative law. One writer, some years ago, likened it to the advent of a new planet. In 1939 it came to the notice of the President of the United States, with the result that two years later there came forth the highly esteemed publication entitled *Final Report of the Attorney General's Committee on Administrative Procedure*. In the same year the Governor of New York appointed a commissioner charged with the duty of studying the judicial functions of the administrative agencies of that state. In 1942 the commissioner, who is now the chairman of the Association's Section of Administrative Law, filed a report of such fine analytical qualities that it has become virtually a textbook upon the subject. In 1943, after its efforts to secure national legislation governing the administrative agencies had met with defeat, the American Bar Association made another attempt. This time its essay in the field was destined to succeed, for in 1946 Congress adopted the Administrative Procedure Act. Although that Act as a medium for achieving justice has been described as secondary only to the Judiciary Act adopted by the First Congress, efforts to improve the procedure of administrative bodies has not stopped. To the contrary, they have quickened.

March 3, 1955, Judge E. Barrett Prettyman, as chairman, delivered to the President of the United States the report of The President's Conference on Administrative Procedure. April 11, 1955, still another momentous report upon the subject of adminstrative procedure was announced. This one was entitled *Recommendations of the Hoover Commission for the Improvement of Legal Services and Procedure in the Executive Branch of the Federal Government*. The report just mentioned was based upon a comprehensive study which was made by the Commission's task force on legal services and procedure under the chairmanship of James M. Douglas, formerly Chief Justice of the Supreme Court of Missouri.

Both reports afford ample evidence that the committees from which they emanated devoted careful, enlightened study to the duties assigned to them. Both are worthy of the attention of every lawyer.

The report of the Hoover Commission yields the interesting information that approximately 9,700 attorneys are employed in the executive branch of the Government. The report is concerned in part with discovering a way in which capable attorneys will be attracted to the employment of the Government and will find in their employment opportunities for career service. But its purpose is by no means confined to that quest. It seeks a means whereby their duties will not overlap and they will not write conflicting opinions for the different agencies. The report of the task force takes as its province the full scope of administrative law. It makes recommendations whereby legislation which delegates authority to agencies will be expressed with clarity and precision. Further, it is concerned with the quality and the status of the hearing official. It seeks improvement there by changing the status of the official from an executive to a judicial character. A feature of the report, which is certain to attract the attention of the profession, is its recommendation that judicial functions, such as the issuance of cease and desist orders which savor of injunctions should come from courts, whether the latter be deemed administrative or of the orthodox kind.

The bills drafted by the task force have been introduced in the Congress as H.R. 6114 and H.R. 6115.

Both the task force and Commission reports on legal services and procedure are available from the Superintendent of Documents, Washington 25, D. C. The price of the former is $1.25 and of the latter 45 cents.

Beginning with this issue, the JOURNAL prints in three installments a summary of the Hoover Commission's study and report prepared by Whitney R. Harris, staff director of the task force and Executive Director of the American Bar Association. The other two installments will appear in the next succeeding issues of the

JOURNAL.

The JOURNAL believes that in calling attention to these two highly important studies, which affect not only the lawyer, but also every citizen who reveres the administration of justice, it is serving the nation.

■ *Warding the Warders*

A scientist has just advanced the theory that the susceptibility of the higher primates to a pathological condition of the blood has, in the course of evolution, brought us human beings to a state where we derive pleasure from mental activity. It is certainly true that some stimulus, be it pathological or natural, goads us on to devote ourselves to endless speculation and a moderate amount of action in the field of organization of our community life. If, then, we are so constituted that our happiness depends upon activity in the attempted solution of that problem, we are fortunate in that that source of happiness is inexhaustible. In the nature of things, government can never govern itself; as long as life on this planet endures this restless mental energy of ours will have an unattainable ideal to which to devote itself, a government which will govern us but which we shall govern.

The conventions in many of the states, in adopting this Constitution of ours which embodied the plan for a strong government to take the place of the impotent confederation, expressed their desire that the strength of that government be curbed so that it could not become our master rather than our servant. The adoption of the Bill of Rights in response to that desire irrevocably committed the new government to protect the people against the abuse of the newly created power. What would have seemed a paradox to statesmen trained before the era of Montesquieu was the quintessence of reason to those who were giving life to the new governmental device of the separation of powers. As one of the checks and balances the judicial branch of the government was charged with the duty of restraining abuse of power by the executive and the legislative.

Hence it comes about that the Government Lawyer, our Minister of Justice, the Attorney General of the United States, when he swears to enforce the Constitution of the United States, undertakes not only to protect the government from people but also to protect the people from the government.

Our cabinet officer for the judicial department is deeply sensible of the obligations of this dual responsibility. He has expressed his conception of the philosophy of the Bill of Rights in an address that the JOURNAL is privileged to publish in this issue. May the holders of his high office, like him, ever proclaim to the world that liberty cannot exist without law!

■ *Clarence Eugene Martin*, 1880-1955

Time relentlessly moves onward and with its passing, society changes and new ideas and new faces have an opportunity to make their appearance on life's stage. Nowhere is this situation more apparent than within the limits of our own organization—the American Bar Association. Since the first of the year, three of our distinguished past presidents have left the scene. All three were connected with that period of our existence referred to by Sunderland in his history of the Association as "the era of national expansion".

Elsewhere in this issue of the JOURNAL appear brief biographies and obituaries of Clarence Eugene Martin, the fifty-sixth president of the Association, and Gurney Elwood Newlin, its fifty-first.

Mr. Martin served as its leader during the height of the depression years, when for the first and only period in the existence of the Association, its membership showed a substantial reduction. Clarence Martin was a sturdy and staunch soul, and while he was its leader, the Association under him presented a sound and solid opposition to the political and social influences which were doing so much to take advantage of the economic distress then existing in the nation at large to effect substantial changes in its social, economic and political structure. His passing breaks another of the slender ties which connect the present membership of the Association to a notable period in its past. Clarence Martin served the Association well and the record of his services to it is perpetuated in its present organization.

■ *Gurney Elwood Newlin*, 1880-1955

Wherever he walked on his journey through life, there shone the warm light of his gentle and cheerful disposition. He was ever genial and friendly, kindly and considerate of those about him.

He was not only an able and skillful lawyer but a man with a fine sense of civic pride—a sincere and genuine patriot. Although well beyond the age of civilian eligibility for duty with troops in the line, when World War I burst upon us in all its fury, he was quick to respond to the urge of patriotism which took him to the front with the American Red Cross.

Gurney Newlin, during a long and successful career at the Bar, never lost sight of the duty of the lawyer to serve the public. Like many other high-minded men, he believed in the organized Bar. He deemed it an appropriate vehicle through which to contribute his share to the civic welfare of his community and his profession.

Ever alert for opportunities to aid in the promotion of worthy objectives of the bar associations to which he gave allegiance, he was unsparing in his willing expenditure of time and effort. Especially was this true of his devotion to the American Bar Association. His reward was sure and well deserved.

At Seattle in 1928, he was elevated to the presidency of the Association. And the confidence of the members was not misplaced, for he served with high fidelity in the best tradition of his illustrious predecessors.

Clarence Eugene Martin, 1880-1955

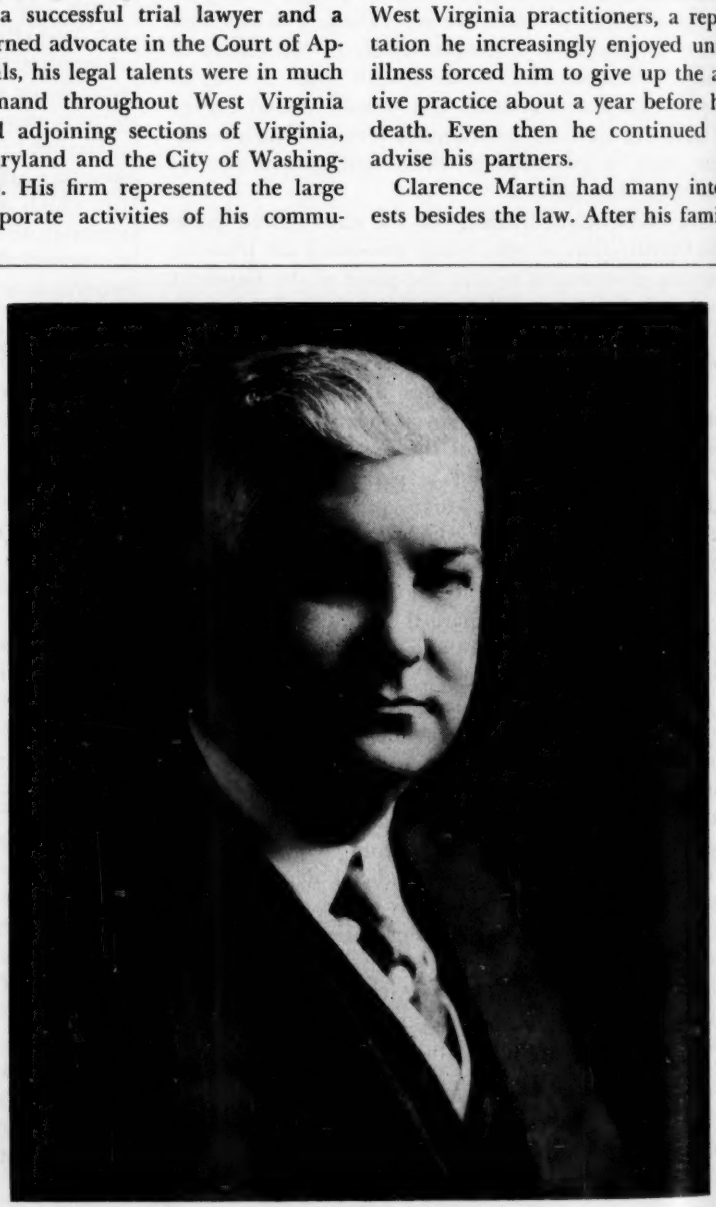
Fifty-Sixth President of the Association

■ Clarence Eugene Martin, of West Virginia, fifty-sixth President of the American Bar Association, 1932-1933, died at his home in Martinsburg, West Virginia, on Sunday April 24, following an extended illness. Mr. Martin was born March 13, 1880, in Martinsburg and lived there all his life. After attending the local parochial schools, he entered West Virginia University at the age of 15 and received his LL.B. degree in 1899. In 1901 he received the degree of LL.M. from Catholic University and the same year was admitted to the Bar. In 1904 he married Miss Agnes G. McKenna, of Cumberland, Maryland, who survives and who was his constant companion at Association meetings. Also surviving are his two sons, State Senator Clarence E. Martin, Jr., and Morgan V. Martin, both of whom were his law partners. He served as Martinsburg City Attorney from 1904 to 1906, was President of the West Virginia Bar Association in 1924 and during World War II he served by appointment as Berkeley County Prosecuting Attorney in the absence of his son, C. E. Martin, Jr., who was in service. In recognition of his attainments, West Virginia University, Dickinson College and Catholic University conferred honorary degrees upon him.

Early in his practice he formed with Cleveland M. Seibert, a prominent West Virginia lawyer, the partnership of Martin and Seibert, an association which continued successfully and happily until Mr. Seibert's death in 1936.

Like his fellow West Virginian and life-long intimate friend, John W. Davis, whose death preceded his by less than a month, Mr. Martin enjoyed being a "country lawyer". The panhandle of West Virginia, where Martinsburg is situated, is closer to the more important cities of Virginia and Maryland and to the District of Columbia than to the larger cities in West Virginia itself. Early acquiring a reputation at the Bar as a successful trial lawyer and a learned advocate in the Court of Appeals, his legal talents were in much demand throughout West Virginia and adjoining sections of Virginia, Maryland and the City of Washington. His firm represented the large corporate activities of his community. He appeared as counsel in most of the important litigation in his section of the country, where his eloquence, his astuteness, his capacity for indefatigable labor and tenacity established him as one of the leading West Virginia practitioners, a reputation he increasingly enjoyed until illness forced him to give up the active practice about a year before his death. Even then he continued to advise his partners.

Clarence Martin had many interests besides the law. After his family



and his friends his principal outside activities centered in his church and in the American Bar Association. He was for many years a trustee of the Catholic University of America and was especially interested in the development of the law school of that fine institution. Because of his service to the Roman Catholic Church, in 1929 Pope Pius XI appointed him a Knight Commander of the Order of St. Gregory the Great. He also served as a member of the Supreme Board of Directors of the Knights of Columbus.

Mr. Martin joined the Association in 1912 and demonstrated his devotion to the Association by his service on various committees, including the old General Council and Executive Committee. He was a charter member of the American Law Institute and a member of the American Judicature Society, and he always attended their meetings and participated actively in their proceedings. For years he was a representative from West Virginia on the National Conference of Commissioners on Uniform State Laws.

Throughout his lifetime Mr. Martin always placed principle and conviction above expediency. He inherited a firm belief in states' rights. The subject of his annual address in 1924 as President of the West Virginia Bar Association was "Shall We Abolish Our Republican Form of Government?" The greater part of that address was devoted to his opposition to the then pending Federal Child Labor Amendment. While he favored proper state regulation of child labor, he characterized the proposed amendment as a socialistic measure and "an ingenious attempt to nationalize children. . . ." His opposition to the amendment was said to have influenced the West Virginia legislature in refusing to ratify it. Because of this opposition he incurred the enmity of certain powerful groups which in after years successfully opposed his appointment to high governmental positions. In his Annual Address as President of the American Bar Association on the "Growing Impotency of the States", he enlarged upon his opposition first advanced in his annual address to his own state bar association, to the encroachments of the Federal Government upon the state governments and reiterated his belief that the states are the proper depository of stable government and the legal profession the best defender of state sovereignty. In another address delivered during the year he was President, after outlining the increasing value of the Asso ation to lawyers, he called for a reorganization of the Association and for a greater voice of state and local organizations of lawyers in its activities, a summons which was fulfilled with the reorganization of 1936.

Typical of his stand on states' rights was his opposition to prohibition, and so it was with considerable pleasure that he presided over the West Virginia Constitutional Convention called to ratify the Twenty-first Amendment.

He was always deeply interested and influential in Democratic politics in his state and on a national level. In 1941, Governor Homer Holt named him to fill the vacancy in the United States Senate created by the election of Senator M. M. Nealy to the Governorship in 1940. Senator Nealy held on to his senatorial seat until time for his inauguration and then claimed his right to appoint his successor in the Senate, his choice being the late Dr. Joseph Rosier, of Fairmont. Retiring Governor Holt also claimed the right to make the Senate appointment and selected Mr. Martin. The situation was in doubt for several weeks but upon reaching the Senate floor Dr. Rosier won by a vote of 40-38. Mr. Martin had been an outspoken opponent of the New Deal and that faction generally supported Dr. Rosier.

Because of his interest in history and the philosophy of the law he was a member of and actively participated in the proceedings of the American Historical Association and the American Academy of Political and Social Science.

Among Mr. Martin's wide circle of intimate friends and professional associates, he will always be remembered for his devotion to his family, the pride he took in the success of his sons at the Bar and in politics and his enjoyment of social occasions when he could listen to the anecdotes of his friends and recount his own from an inexhaustible fund of interesting stories. Always ready and willing to respond enthusiastically to any request for assistance no matter how humble the petitioner, he was constantly on the alert for opportunities to do kind things and to promote the interest of his friends.

In the passing of Clarence E. Martin, West Virginia has lost one of her great lawyers and a courageous and distinguished citizen; the members of the Association have lost a devoted and loyal friend.

ROBERT T. BARTON, JR.
Richmond, Virginia

Gurney Elwood Newlin, 1880-1955

Fifty-First President of the Association

■ In the year 1928 Gurney Elwood Newlin, known familiarly and affectionately by all who knew him simply as Gurney, was elected President of the American Bar Association. At the time of his death he was the dean of its past presidents.

He was born on November 11, 1880, in Lawrence, Kansas. He died at Los Angeles, California, on May 4, 1955, in his seventy-fifth year.

Gurney was my friend. He was ever the perfect gentleman. He was a distinguished lawyer and executive. He was one of the few men whose judgment always could be depended upon as sound. He was intellectually honest, urbane and kindly, and possessed a rare knowledge of life and people conjoined with a conscientious devotion to his country and the welfare of its citizens.

Graduating from the University of California in 1902 and from Harvard Law School in 1905, he immediately began the practice of the law in Los Angeles which he continued until his death, with ever increasing success.

In 1906 he was appointed general attorney for the Los Angeles Pacific Company, controlling extensive interurban electric lines out of Los Angeles, and in 1910 became its general counsel. Returning to general practice in 1912, he devoted his particular attention to corporation law, acting as attorney and counsel to numerous important companies as well as serving on the boards of directors of leading banks, insurance, oil and other corporations.

From 1915 to 1927 Gurney served as Chairman of the Section of Uniform Laws of the California Bar Association. In 1923 he was elected a member of the Executive Committee of the American Bar Association and was re-elected in 1924 and 1925. He was a member of the National Conference of Commissioners on Uniform State Laws from 1913 to 1929. In 1925 he was appointed by Herbert Hoover, then Secretary of Commerce, as a member of the National Conference on Street and Highway Safety. Also he was for years a member of the Board of Editors of this JOURNAL. These, with his outstanding service as President of the American Bar Association, are but a part

of the many professional services of Gurney Newlin, all of a high order of accomplishment.

At the time of his death he had been a member of the American Bar Association for forty-six years. In addition to being a member of the Los Angeles County and the California State Bar Associations, he was an honorary member of the Kansas State Bar Association, Iowa State Bar Association, Harvard Law School Association of New York, West Virginia Bar Association, Canadian Bar Association and The Association of the Bar of the City of New York, Delta Kappa Epsilon (honorary President 1932), Order of the Coif, Golden Bear (honorary).

But if his professional attainments and services were many and of a high order of accomplishment, his "extracurricular" accomplishments and services were no less so. Throughout the period of World War I, Gurney Newlin was active in movements in behalf of the nation and its soldiers. From the entry of the United States into hostilities and until May, 1918, he was chairman of the Los Angeles Chapter of the American Red Cross. In May, 1918, he was appointed Deputy Commissioner to France of the American Red Cross, with the rank of major in the Army of the United States, and had charge of all Red Cross operations in Paris, and on the line from St. Quentin to Verdun, returning to the United States in April, 1919.

Gurney Newlin organized and was the first chairman of the Paris District Chapter of the Red Cross. In 1917-1918, until his departure for France, he was a member of the State Council Section of the National Council of Defense, in charge of its work in nine Western states. During 1918, also, he was Wage Adjustment Examiner of the United States Shipping Board for the Southern District of California and a member of the Executive Committee of the Pacific Division of the American Red Cross. In recognition of services rendered during the war, he was awarded the Médaille de la Reconnaissance Francaise by the French Government.

From time to time Gurney also acted as President of the Los Angeles Grand Opera Association, director of the Southern California Symphony Association and other civic organizations.

Probably no one, save his wife, knows a lawyer better than his partner. So it is with pleasure and gratitude that I am privileged to close this memorial with the following tribute by Allen W. Ashburn, Judge of the Superior Court of the State of California, who, himself a distinguished lawyer, was for twenty-seven years Gurney's partner:

> In the passing of Gurney we have lost a man of large stature, one whose presence was good for the community. Devoted to its humanitarian and artistic enterprises he was a symbol of good citizenship. As a lawyer he occupied a unique place. Known for outstanding legal ability, he was equally identified with devotion to highest ethical standards in actual practice, so much so that any lawyer from his firm entered the court room with a presumption in his favor; this in turn reflected upon his associates and inspired them to emulate the head of the firm. Our partnership of twenty-seven years' duration was formed without the scratch of a pen, and dissolved in the same way when I was appointed to the bench. In all those years there never developed a serious argument or disagreement between us. I think that was due to his sweetly tolerant nature and my profound regard for his character and judgment. I will miss Gurney . . . and will remain always proud of the privilege of long years of collaboration with him.

GUY RICHARDS CRUMP
Los Angeles, California

The recently organized Foreign Tax Group of the Controllers Institute has begun publication of a series of Foreign Tax Digests. These are not commercially published but were primarily prepared for the use of Institute members. However, a small supply is available for other groups interested in foreign trade.

Already completed and available is a summary on France which, in addition to covering taxes, touches upon vacation, severance and overtime pay provisions of the French labor law. Digests on Brazil, Canada, Chile and Peru are in process of compilation and should be available in the near future.

Members of the American Bar Association desiring copies of these Tax Digests should communicate with Norman Lothian, Controllers Institute, 1 East 42d Street, New York 17, New York.

The Internal Revenue Code of 1954:

A Summary of the Estate and Gift Tax Provisions

by George E. Ray and Oliver W. Hammonds · *of the Texas Bar (Dallas)*

■ This is another in a monthly series of articles on the new Internal Revenue Code which began in the November, 1954, issue of the Journal. The articles are written by committee or sub-committee chairmen of the Section of Taxation and are edited by John W. Ervin, Chairman of the Section's Publications Committee, as a service of the Section to help Association members understand the changes made by the new law. Several other articles are in preparation and will appear in succeeding issues of the Journal.

■ The new Internal Revenue Code has made substantial changes in our federal tax law with respect to federal estate and gift taxation, as well as in other areas of federal taxation. The Treasury is currently working on the Regulations to be issued as the Treasury's interpretation of the new provisions. Its Regulations are not expected prior to the summer or fall, and in fact may be later than that. In the meantime, estate planning has to go on, gifts need to be made, and it is necessary that lawyers inform themselves on the new law. With that in mind, a bird's-eye view of the new estate and gift tax provisions would seem in order.

I. ESTATE TAX

Under the new law several important changes have been made, but the basic structure of tax has been retained and the rates have been combined. There are six new major provisions, two minor ones.

A. *Basic and Additional Tax Combined* (Sections 2001 and 2011). Under the old law liability was first computed for a "tentative tax" which, in fact, might well have been called the "real" tax. If the estate was over $100,000, then the so-called "basic estate tax" was computed. An amount constituting 80 per cent thereof represented the maximum credit allowed for state death taxes.

The new law simplifies the rate structure by doing away with the necessity for separately computing the basic tax. It does not change the tax liability or the credit allowed for state death taxes. Under the new Code provisions a method of determining the basic and additional estate taxes separately is retained for certain members of the Armed Forces who are exempt from what was called the "additional" estate tax.

B. *Credit for Tax on Prior Transfers* (Section 2013). The prior law permitted a deduction for property received from a prior decedent (or by a gift subject to tax) within five years of the instant decedent's death. It was necessary, however, that the property be property that was still in the possession of the instant decedent, or property that could be traced as acquired in exchange. The deduction was reduced if the property was subject to a debt or claim and no deduction was granted if the property was received from the instant decedent's spouse. Under the old law the deduction for property received from a prior decedent or by gift subject to tax was independent of the amount of tax paid on the prior transfer.

The new law provides for a credit for the tax paid on the property in the estate of the prior decedent, but the credit may never be larger than if the instant decedent had not received the old property. The credit is based upon the value of the property at the time of the death of the prior decedent. Property transferred between spouses, to the extent no marital deduction is available, is eligible for this credit. The credit is allowed in full for the first two years following the death of the prior decedent. It then decreases by 20 per cent every two years until none is left at the end of ten years. The credit for gift tax paid on a prior transfer has been omitted in the new law. The provision is also applicable under the new law where the property was transferred to the decedent by or from a person who died within two years after the decedent's death.

The effect of the new law is twofold. (1) It changes the deduction for property received from a prior

decedent to a credit for tax paid on the property in the estate of a prior decedent, and (2) it extends the period involved from five years to ten years. In order to eliminate tracing problems, the credit provided under the new bill is based upon the value of the property at the time of the death of the prior decedent. The provision also takes care of *inter vivos* transfers that might be subject to estate tax as gifts in contemplation of death. In addition, the provision is made to include specifically property passing as a result of the exercise or non-exercise of a power of appointment.

C. *Transfers Taking Effect at Death* (Section 2037). Under the old Code provisions property previously transferred by a decedent during his lifetime was includible in his gross estate if possession or enjoyment could be obtained only by surviving him.

The new law provides that property previously transferred by a decedent is includible in his estate only if, at the time of his death, he still had a reversionary interest exceeding 5 per cent of the value of the property. The rule set forth in the new law removes a harsh provision of prior law. The old law required the property to be subject to estate tax merely because the ultimate recipient of the property was determined at the time of the decedent's death, regardless of the value of the reversionary interest. Under the new law there must be at least one chance in twenty that the reversionary interest will come into being, either through the express terms of the instrument involved or by operation of law. The methods of valuation to be employed with respect to the decedent's reversionary interest are recognized valuation principles and without regard to the fact of the decedent's death. The mere fact that the value of the reversionary interest cannot be measured precisely will not prevail, if it is apparent from the facts that the property could have reverted to the decedent under contingencies that were not remote. The new provision adopts the rule that previously applied to transfers made prior to October 8, 1949.

D. *Annuities* (Section 2039). The old law held that the value of a joint and survivor annuity purchased by the decedent was includible in his gross estate. The new law provides that a joint and survivor annuity will be taxed in the gross estate of the deceased annuitant only to the extent that the decedent contributed to its cost. Payments made by an employer under any unqualified pension, profit-sharing or retirement plan are taken into account and considered paid by the employee. Under an approved plan, however, the employer's contributions are not considered as made by decedent.

An additional deduction is granted under the income tax provisions (Section 691), when the survivor reports the income, the deduction being equal to the estate tax attributable to the income element of the survivorship feature which had accrued since the annuity was purchased.

Under the old law it was not clear whether a joint and survivor annuity purchased by the decedent's employer, or an annuity to which both the decedent and the employer made contributions, was includible in the decedent's gross estate. The new law clarifies this point by providing that payments by the employer under an unqualified pension, profit-sharing or retirement plan are to be taken into account, whereas under a qualified plan the employer's contributions will not be considered to have been made by the decedent. Under the new law, the provisions apply not only where an annuity is payable to the decedent, but also where the payment is made in a lump sum.

E. *Proceeds of Life Insurance* (Section 2042). The prior law provided that the proceeds of life insurance on a decedent are to be taxed in his estate if (1) the policy was payable to the executor; or (2) if the proceeds were payable to other beneficiaries, and if the decedent paid the premiums, or if the decedent possessed the elements of ownership in the policy.

The new law provides for the inclusion in the estate of the proceeds if the policy is owned by the decedent. The premium payment test is removed. The 5 per cent reversionary interest rule is made applicable to life insurance under the new Code. In determining whether the reversionary interest exceeds 5 per cent, the same rules for valuation are used as with respect to transfers taking effect at death in Section 2037.

An interesting question arises under the new law where the decedent, as owner of the policy, has made a gift thereof during his lifetime. May the proceeds of the policy be taxed in his estate on the theory that there was a possibility of reverter to his estate by operation of law? Must he expressly disclaim such a reverter when he makes his gift? Perhaps the Treasury Regulations will clarify this point.

This question has given rise to much discussion both in print and otherwise. Many accepted authorities in the field of estate planning[1] incline to the view that the right of inheritance does not constitute a reversionary interest. Whether or not a Treasury Department which feels that the new law may have gone too far in completely eliminating the premium payment test will in its Regulations take such a favorable view remains to be seen. There is some indication at the present writing that some of the Treasury experts would like to reimpose the premium payment test in part, if not completely. The suggestion has been made that where the decedent, as owner of the policy, made a gift thereof during his lifetime only the cash surrender value of the policy at the time of the gift should be relieved of estate tax rather than the entire amount of the proceeds, where he, until his death, continued to pay the premiums.

The contemplation of death provisions of Section 2035 complicate the problem. It could be argued that

1. Casner, *The Internal Revenue Code of 1954: Estate Planning*, 68 HARV. L. REV. 222, 256 (1955.) See also Dicus, *Some Implications of the 1954 Code for Estate Planning*, 32 TAXES, THE TAX MAGAZINE, 938, 940 (1954).

life insurance by its very nature is testamentary in character and therefore is bound to be purchased in contemplation of death. The courts have not accepted this as the basis for taxation of the insurance proceeds in the estate.[2] Where, however, an assignment of the policy occurs within the three-year period immediately prior to the death of the insured, the proceeds will be included in the taxable estate of the insured under the rebuttable presumption. Where the assignee pays the premiums after the date of the gift of the policy, it would seem that the proceeds of the insurance attributable to the premiums paid by the assignee should be excluded from the estate tax under the pro rata doctrine adopted by the federal court.[3] Once the three-year contemplation of death period has passed, it would appear that the insured could pay the premiums without risking the proceeds of the policy in his estate under the contemplation of death provision, with the possible exception of the three-year period immediately preceding his death. In any event, the new Regulations, when issued, will bear close scrutiny.

F. *Expenses, Indebtedness and Taxes* (Section 2053). Under the old Code, funeral and administration expenses, claims against estate and mortgages were deductible, but the deduction was limited to expenses allowable by the laws of the jurisdiction under which the estate was to be administered. Moreover, the deduction could not exceed the value of the probate estate, that is, the value of the property subject to claims. If the assets were in a trust, then the expenses paid out of the trust assets were not allowed as a deduction to the extent that they exceeded the probate estate.

The new law provides that funeral and administration expenses, debts and other claims allowable by local law are deductible without limitation, except that any excess over the probate estate must be paid within the period (fifteen months) provided for filing the estate tax return. An example of this type of deduction occurs where the decedent's estate includes only property held by the decedent and his surviving spouse as tenants by the entirety and where funeral expenses, debts and other claims allowable under local law are paid by the spouse prior to the time for filing the estate tax return. Such payments will not constitute a valid deduction.

Under the new Code the expense of administering property included in the gross estate but not in the probate estate is deductible if paid before the expiration of limitations on assessment of the estate tax. An example of this type of expense would be commissions paid with respect to trust property which is included in the gross estate and attorneys' fees involved in contesting the inclusion of the trust property in the decedent's gross estate.

G. *Marital Deduction* (Section 2056). The old Code provided for the marital deduction in the case of property passing from one spouse to the other if the surviving spouse had a right to the income and had a general power of appointment. It required that the property be placed in "trust". It was not clear that a legal life estate would qualify as a trust, nor what was the result where there was a power of appointment over only part of the property.

The new law provides that property in a legal life estate qualifies for the marital deduction. The property need not be in trust. Moreover, a right to income, plus a general power of appointment over part of the property, will qualify that part for the marital deduction. The new rules have been made applicable to situations involving life insurance or annuity payments where the surviving spouse has a general power of appointment.

The Tax Section of the American Bar Association had recommended to the House of Delegates that the above new provisions be made retroactive to 1948 when the marital deduction provisions were first enacted. The House of Delegates so recom-

Denny Hayes

Bill Williams Photo

Oliver W. Hammonds (left) and George E. Ray are law partners in Dallas, Texas, and have written many articles on federal taxation. Both are graduates of the Harvard Law School and have served as attorneys with the Treasury Department. Mr. Hammonds served in the General Counsel's Office of the Department in 1936-1937 and as Special Assistant to the Attorney General, Tax Division of the Department of Justice from 1937 to 1942. Mr. Ray was attorney for the Board of Tax Appeals from 1938 to 1941 and Principal Attorney of the Tax Legislative Counsel of the Treasury Department in 1941-1942.

2. *Cronin* v. *Commissioner*, 164 F. 2d 561.
3. *Liebmann* v. *Hassett*, 148 F. 2d 247.

mended to Congress, but the retroactive application of the new provisions was not effected under the new law and the Tax Court in a number of recent cases has held that the above provisions of the new law are not retroactive to deaths occurring prior to August 16, 1954, the date of enactment of the new Internal Revenue Code.[4] Retroactive application of the provisions of the new law back to the effective date of the marital deduction provisions in the 1948 law would appear in order, and when the next Revenue Act is passed by Congress it would seem likely that retroactivity would be accorded the above discussed provisions.

H. *Stocks Situated in the United States* (Section 2104). The old law provided that stock held by nonresident aliens was to be treated as property situated in the United States and subject to estate tax where the stock in question was stock of a domestic corporation, or stock of a foreign corporation, if the certificates were located in the United States.

Under the new law the first rule only was retained. Only stock of a domestic corporation will be taxed in the estate of a nonresident alien. The rule provided by the new bill conforms to tax conventions which the United States has entered into with a number of countries and makes it possible for banks in the United States to serve as depositories for stocks of foreign corporation.

I. *Conclusions.* The changes made by the new law are substantial and numerous. All in all, they appear to be clearly beneficial to taxpayers and serve to make the federal estate tax more equitable. Without any question, the new provisions will create additional problems and complexities which cannot now be clearly foreseen. As President Eisenhower said, on signing the bill, "This certainly will make a lot of work for lawyers."

II. GIFT TAX

Several substantive changes have been made, but the rate of tax remains unchanged. The new law provides five major changes and one minor change.

A. *Nonresident Aliens* (Section 2501). The old law applied the gift tax to all gifts made by citizens or residents of the United States. In the case of nonresident aliens, the tax was on all gifts of property within the United States. The new law imposes the gift tax on all gifts made by citizens or residents of the United States wherever the property is situated. In the case of nonresident aliens, if engaged in business in the United States, the tax is imposed on gifts of property situated in the United States. In the case of all other nonresident aliens, the tax is imposed only on tangible property situated in the United States.

The principal effect of the prior law imposing gift tax on gifts of intangible property by nonresident aliens has been to deny business to United States banks as depositories for property which nonresident aliens could keep outside of the United States if they intended to make gifts. The provisions of the old law also operated to make the donees keep the property out of the United States for fear that upon return of the property to the United States gift tax would be imposed.

B. *Gifts to "Minors"* (Section 2503). Under the prior law, in the case of gifts to minors it was not clear how a gift could be made in trust or through a guardian for a minor's benefit, other than as a future interest.

The new law provides that gifts to minors will not be considered gifts of future interests if the income and the property can be spent by or for the child prior to his attaining age 21, and if not so spent, passes to the child when he reaches age 21, and to his estate if he dies prior to age 21.

Further change in the law would seem in order. The law as it existed prior to the 1954 Code was unduly discriminatory against gifts to minors. It might now well be claimed that the law is unduly discriminatory against gifts to adults. As the law now stands, delivery of corpus to a donee which is delayed ten years will result in a higher exclusion from gift tax than will a gift where the delivery of corpus is delayed only five years, since the value of the income for ten years is greater than the value of the income for five years. Consequently, the farther in the future the delivery of corpus, the greater the exclusion, and when the delay in delivery of corpus reaches fifteen or more years, the value of income will in most cases reach nearly the value of the entire corpus.

The principal basis for the denial of the $3,000 annual exclusion in the case of gifts of a future interest rests upon the difficulty of ascertaining "the number of eventual donees and the value of their respective gifts".[5]

In order to eliminate the discrimination against gifts where delivery of corpus is delayed only a few years, it would seem in order to amend the law[6] to provide that no part of a gift to an individual shall be considered a gift of a future interest where the property or the income therefrom

(1) may be expended by, or for the benefit of, the donee, and

(2) will, to the extent not so expended,

(a) pass to the donee within a period no longer than ten years after the date of such transfer and

(b) in the event the donee dies within a period no longer than ten years after the date of such transfer, be payable to the estate of the donee or as he may appoint under a general power of appointment.

Such a provision would place gifts to adults on substantially the same basis as gifts to minors if, in the case of a gift to a minor, the law provided that no part of the gift should be considered a gift of a future interest where the property or the income therefrom

(1) may be expended by, or for the benefit of, the minor donee before his attaining the age of 21 years

(Continued on page 571)

4. *Louis B. Hoffenberg*, 22 T.C. No. 146; *Estate of Harrison P. Shedd*, 23 T.C. No. 8; *Estate of Edward F. Pipe*, 23 T.C. No. 14.

5. *Fondren* v. *Commissioner*, 324 U. S. 18, 25.

6. This suggestion has been made by a subcommittee on gifts to minors of the Federal Estate and Gift tax committee of the Tax Section. Ralph G. Lindstrom is chairman of the subcommittee.

Congressional Investigations:

A Re-examination of the Basic Problem

by Walter E. Wiles · *of the Illinois Bar (Chicago)*

■ **Witnesses before a congressional committee are not defendants in a court, Mr. Wiles argues. Their status is the same as that of any witnesses in a courtroom, and the talk about the rights of such witnesses is misleading, he declares. This article is taken from an address delivered before an Americanism forum in Galesburg, Illinois.**

■ Nowhere in the Constitution is anything said about investigations by congressional committees or even by Congress.

It follows that whatever power Congress has to conduct investigations through its committees is such as may be construed to be incident to the powers expressly conferred. The Constitution in Article I, Section 1, confers on the Congress "All Legislative Powers herein granted". Section 2, confers one power on the House of Representatives not strictly legislative, *i.e.* "the sole power of impeachment". Section 3 confers on the Senate "the sole power to try all impeachments". This is a measure of judicial power conferred on the Senate. Section 5 makes each House the "Judge of the Elections, Returns and qualifications of its own Members", and gives to each House the power to "punish its Members for disorderly Behavior", and to "expel a Member". Those powers might also be said to be judicial in their nature, perhaps the power to expel a member by a two-thirds vote might be considered an executive power.

Some of the eighteen provisions of Section 8 read as if they conferred power both legislative and executive, but that all of those powers are limited to legislative import is established by other provisions of the Constitution and by long-accepted construction.

It therefore follows that whatever powers Congress has to make investigations of anything must be incident to enabling it to perform its function of enacting legislation, or to enable it to perform one or more of its limited judicial functions.

Certainly, it would not be seriously contended that the Congress must originate all legislation within the powers conferred without inquiring into the need for legislation; hence, it follows that Congress may investigate all matters that will aid it to determine the need for legislation or in formulating the legislation when the need has been determined.

Also, it would be unrealistic to ascribe perfection to Congress in all its enactments. It follows that investigation of the operation of legislation already enacted to determine whether it is effectively accomplishing its purpose, and if not fully effective, whether more is needed or some should be taken away is a valuable aid to Congress in performing its duties.

Then, since the House of Representatives has the sole power of impeachment, it obviously has the power and the duty when occasion demands to investigate the conduct of any executive or judicial officer subject to impeachment.

The Senate advises on and consents to treaties, and confirms many executive appointments. It can perform these duties only after sufficient investigation to be properly informed.

The Congress has the power to submit proposed constitutional amendments to the states for ratification.

These are all the instances beyond a consideration of its own organization and rules in which the power to conduct investigations can be fairly inferred from the powers conferred on the Congress.

It therefore follows that the purposes of every investigation by a congressional committee fall within one of the following groups:

(a) To ascertain what new legislation is needed.

(b) To ascertain what existing laws should be repealed.

(c) To ascertain whether legislation which has been enacted is effectively accomplishing its purpose, with a view to changes where called for.

(d) Inquiring into the fitness of

nominees for office before confirmation. (Senate only).

(e) Securing information on the advisability of ratifying a Treaty. (Senate only).

(f) Inquiring into the need for submission of a constitutional amendment.

(g) Policing the conduct of members of Congress themselves and their elections.

(h) Inquiring into the conduct of public officers to determine whether there should be impeachment. (House only).

None of these, except the last two look to placing charges against anyone for anything. All other investigations are for the purpose of informing Congress. They are not judicial hearings. There is no need of the safeguards of the rules of evidence which have been developed over the centuries to try the guilt or innocence of men. Information to aid the Congress in the formulation of legislation may be of great value, yet it might not be admissible as evidence in a court of law. In short, a congressional investigation, except in impeachment cases, is neither a trial nor the gathering of evidence for purposes of a trial.

The theory has been advanced in some quarters that witnesses before congressional committees should be given the right to be represented by counsel, that they should have the right of cross-examination of other witnesses, as well as the right of examination by their own counsel, and that they should have the right to offer rebuttal testimony.

The proponents of these theories, if they are sincere, overlook the purpose of the presence of these people and the capacity in which they appear. They are subpoenaed as witnesses, nothing else. Only those with guilty consciences fancy themselves as defendants. Even in courts of law, witnesses are not represented by counsel participating in the trial, they have no right of cross-examination or rebuttal. Only the parties to the lawsuit have these rights, yet witnesses subpoenaed in a trial are compelled to testify. This may be and sometimes is very embarrassing to the witness, yet he must answer unless he invokes his constitutional right to not testify so as to incriminate himself, and that too may be embarrassing to him.

A witness before a congressional committee has all the protection of a witness in a court of law. Why should he have any more? Is the business of all the people less important than the business of two litigants?

Actually, congressional committees investigating subversive activities permit witnesses to be represented by counsel, and permit a witness to consult counsel before answering a question, even after the question has been asked, which is a concession to the witness that no court would tolerate.

We meet people who have not taken the trouble to inform themselves who complain that witnesses are deprived of their constitutional rights by not being confronted with their accusers as such. If a witness in a trial for theft should give evidence which reflects on a prior or subsequent witness, the witness reflected upon cannot confront his "accuser" in that trial, yet no one seems outraged because of this rule.

There would be no problem if we would keep in mind that a committee hearing is not a trial and that people are called there in the capacity of witnesses only, subject to the rights and protection of witnesses. They are not charged with anything, and the committee has no power to adjudicate the guilt of anyone.

Much misunderstanding has been developed in the minds of a considerable portion of the public by careless and misleading statements that appear in the press. These statements are sometimes by well intentioned persons who have pursued an erroneous approach to the subject. Other times they are the result of deliberate propaganda for the purpose of discrediting the congressional committees and destroying their effectiveness.

For example, we hear the man on the street remark that he is in sympathy with the object of Senator So-and-So, naming the chairman of a committee, but that he does not approve the Senator's method. Yet, when we inquire of this same citizen what methods have been used, that he disapproves, he cannot name a single thing that has been done that he objects to, and when pressed for his suggestions he indicates that he favors much more drastic action than has ever been taken by congressional committees. We also find many who think of these investigations as trials with charges and the right to answer, with a determination of guilt to be made by the committee. When this same citizen realizes that there is no indictment and no determination of guilt within the powers of the committees, he no longer finds any fault with the methods of the committee.

We are not unaware that the publicity attendant on the committee hearing may disseminate testimony which reflects on the character of a person named in the testimony and which may have a material effect on his social or economic standing in the future, but the same thing may happen in a lawsuit. The scope of

Walter E. Wiles was born in North Carolina and received his education in that state and at George Washington University and the Sorbonne. He has been practicing law in Chicago since 1925. Presently the senior member of his firm, he has had broad legal experience and is active in his church and in various fraternal and patriotic organizations.

the dissemination, and consequently its effect, is determined by the public interest in the proceedings.

We have yet to find a method by which this possibility can be avoided and at the same time permit our judicial and legislative bodies to effectively carry out their functions.

We doubt that many people would favor star chamber secret meetings of legislative bodies or judicial tribunals, and if such meetings were permitted they would presage the death of liberty.

Preliminary investigations may be made in secret by grand juries, but before the issues can be determined, the American way is an open trial. Legislative bodies may make inquiries in secret sessions, but before they take action to legislate or otherwise perform their functions, the basis on which they act should be disclosed to the people in whose name they act.

It may well be true that witnesses in both courts and legislative committee hearings have given testimony which tends to smear innocent people. That was notoriously true of witnesses appearing before investigating committees of the Senate during the "Teapot Dome" era, when regard for the effect of testimony which reflected on people who may have been innocent perhaps reached its all-time low; but it is difficult to see how this could have been avoided without denying to the Congress full exercise of its constitutional functions.

The policy of the Un-American Activities Committee of the House of Representatives to afford opportunity to be heard to people who may have been reflected upon by the testimony of other witnesses is an example of the recent efforts of congressional committees to prevent injury to innocent persons whenever possible to do so.

It is of more than passing moment that the greatest hue and cry arises out of those instances of congressional investigations which lead into subversive conspiracies and treason.

If the same people who now object to the methods of investigation by the committees now engaged in obtaining information upon which to formulate legislation for our national security ever objected to the "Smear Tactics" of the Teapot Dome investigations, the subpoenaeing of telegraph records by a Senate Committee headed by Senator Black, or the smear tactics, or worse, of the Bullwinkle Committee, with regard to Dr. Wirt, in the thirties, or to the methods of the more recent committee of the House headed by the late Congressman Buchanan, they never made their voices heard.

We would not like to conclude that it is fear of who may be exposed that provokes the objections rather than the methods of the investigators.

Certainly, we do not ascribe such motives to all the people who have voiced objections, but we do fear that those good people are sometimes influenced by the carefully planted propaganda of others whose motives are not nearly so pure.

In any event, we believe that the lawyers, and particularly the bar associations can render a public service by educating the public to the nature and purposes of legislative committee investigations.

If there were a complete understanding on the part of the public of the purposes and the reason for the procedure, there would never be any witnesses seeking to shield themselves with the Fifth Amendment unless they believed themselves to have committed a crime, if, indeed, there are any such now.

Members of Congress are human beings, they may make errors, and their record has not always been one of representing the people intelligently and effectively, but the hammering out of the legislative process by investigation and an attempt to understand both the will of the people and the means of accomplishing it is a safeguard of liberty and a check on excesses of the Executive without which constitutional government could not exist in a free country.

Notice of Annual Meeting of Members of American Bar Association Endowment

■ The annual meeting of members of the American Bar Association Endowment will be held during the week of the Annual Meeting of the American Bar Association, August 22-26, 1955, at the Forrest Theatre, Philadelphia, Pennsylvania, for the election of two members of the Board of Directors for the term of five (5) years and for the transaction of such other business as may come before the meeting.

All members of the American Bar Association are members of the Endowment.

Books for Lawyers

SIMEON EBEN BALDWIN—LAWYER, SOCIAL SCIENTIST, STATESMAN. *By Frederick H. Jackson. New York: King's Crown Press, Columbia University. 1955. $5.00. Pages 291.*

A reviewer of a biography of a former acquaintance always has a pleasant and interesting task. The undersigned had the privilege of knowing Governor Baldwin. I choose to call him that because he was governor of Connecticut when I knew him best. This distinguished citizen lived a block from me on Wall Street, New Haven, while I was a boy and young man. I sat in the front row near my friend and classmate, Judge Clark, in the Governor's class on constitutional law. Even now I recall distinctly how strongly impressed I was with the Governor's profound and precise knowledge of this subject and of the American way of life during the seventeen and eighteen hundreds. Judge Clark, author of the excellent foreword to this book, has to some extent reviewed it and I am fully in accord with his views.

To me Governor Baldwin was austere, very reserved and of a distinctly scholarly type, who rarely exerted himself to cultivate friendships. Thus, I believe, he had few intimates outside of his family circle. Such a man makes a biographer's task somewhat difficult. While the Governor commanded the high respect of his classes because of his learning, prominence and ability, yet he seemed to us distant and aloof and his students rarely discussed their legal problems with him out of class.

It is extremely difficult for this reviewer to find anything to really criticize in this excellent and readable biography, which is well condensed. Much could be written about this remarkable man but the author has used excellent judgment in keeping it within reasonable bounds. It is apparent that the author has made very painstaking and extensive research into the life and background of this distinguished man. Professor Jackson has ably portrayed his many-sided nature, the wide scope of his activities, his surprising versatility in many fields, his extraordinary energy and industry, the positions of great responsibility held and for which he was considered, the high qualities of mind and character which made such a great impression not only on the fellow citizens of his own generation but upon those who followed, and has given the reader an insight into his personality and kindly nature. The author also referred to the prolonged illness of the Governor's wife, which undoubtedly saddened him and caused him to plunge into and efficiently accomplish an extraordinary amount of work in varied fields in an effort to blur his sorrow. The book also discloses that Governor Baldwin apparently derived great pleasure from extensive and scholarly reading and writing.

Politicians could well read this biography with profit. Governor Baldwin has conclusively demonstrated that a man can attain considerable political success without being a glad-hand artist and a back slapper. The author has convincingly shown that the Governor's political success was largely due to the favorable impression on the average citizen that high character, unusual ability and great industry can make, which instills in the voters a feeling of trustworthiness and confidence in the candidate's ability to guide the destinies of state. A reader can infer that had the Governor had the additional asset of a magnetic personality he would undoubtedly have been a figure of greater national prominence.

A friend of mine, who at one time ably assisted the Governor in his political activities, recalls that when a young man he sought the clerkship of the state senate. He asked the Governor if he would be willing to put in a good word for him with the leader of the senate. My friend reports that the Governor quite peremptorily denied his request saying that it was the business of the senate to choose its own clerk and that the Governor should not concern himself therewith.

Professor Jackson might have devoted more attention to the judicial activities of Governor Baldwin. As the author has pointed out, Justice Baldwin participated in many important cases, but surprisingly enough, the author has failed to mention two cases, generally regarded in Connecticut as *causes célèbres*. I refer to *Bryan's Appeal*, 77 Conn. 240, and *Bryan* v. *Bigelow*, 77 Conn. 604, decided in 1904 and 1905, respectively. In the first case Justice Baldwin served as an Associate Justice, but in the second acted as Presiding Justice in the absence of the Chief Justice. Both these cases involved a nationally known political figure, William Jennings Bryan, and received widespread publicity. The first case was an appeal from a judgment of the Superior Court and the second an action for construction of a will. The main underlying facts of these cases were as follows: The will of Philo S. Bennett, a well-to-do Connecticut citizen, contained a bequest of $50,000 to his wife in trust for the purposes set forth in a sealed letter found with the will. This letter stated that it was the testator's desire for Mrs. Bennet to pay this sum to Bryan, to whose political principles the testator was devoted and for whom the testator found it a pleasure to make financial provision. The testator indicated that no one except Mrs. Bennett and Bryan should know of the letter and bequest. In the first case, our court held *inter alia* that this reference was capable of being applied to any sealed letter and that therefore the sealed letter did not by such reference become a part of

the testator's will. In the second case the Court held in effect that as the will neither disclosed the name of the beneficiary nor the terms of the trust, the attempted gift was void unless it could be supported by the terms of the sealed letter, but the Court had already decided that the sealed letter could not be incorporated into the will by reference and was an attempted testamentary disposition in violation of the Connecticut Statute of Wills. I mention these cases with the thought that they may be of interest to younger members of the Bar.

An interesting sidelight on Governor Baldwin's personality and manner of life is illustrated by the following incidents. An intimate friend of mine, now deceased, served the Governor as naval aide on his staff. As the author has indicated, Governor Baldwin took a Southern trip accompanied by his staff to make some addresses. My friend related that on this trip the Governor kept largely to himself, reading and writing in his stateroom, and usually did not mix with his staff, who enjoyed social chats in the observation car of the train. The Governor and his staff were naturally invited to receptions and other social events. The Governor admonished his staff to be prompt in their attendance at these functions and he and his staff always arrived exactly at the appointed hour. 9 P.M. meant 9 P.M. to the Governor with his New England habits and not 9:30 or 10 P.M., as evidently Southern customs intended, with the obvious result that when the Governor and his staff arrived at the designated places, they found no one there to greet them.

On another occasion, while en route by train, a telegram was received necessitating a change of plans. My friend went to consult the Governor. Upon knocking on the door of the Governor's stateroom and being bidden to enter, he found Governor Baldwin with an open book on his lap. After the Governor had wished my friend "good evening", he pointed to the book saying, "I was merely passing the time by memorizing a few French irregular verbs"!

A monument to Governor Baldwin's public spirit and generosity is the "Baldwin Drive", an automobile road in West Rock Park, constructed with funds bequeathed by him for this purpose. This gift enables the public to enjoy the beauties of a lovely park which overlooks New Haven.

I unhesitatingly recommend this book to those who desire to become acquainted with an extraordinary character. The few hours required to read it will be rewarding. I believe that any reader will feel indebted as I do to Professor Jackson for a most accurate, complete and interesting account of the life of a distinguished Connecticut citizen, who had the vision and played a prominent part in the founding of the American Bar Association.

DAVID L. DAGGETT
New Haven, Connecticut

POLITICS IN AMERICA. *By D. W. Brogan. New York: Harper and Brothers. 1954. $5.00. Pages 467.*

In his rare moments of relaxation, the busy lawyer often seeks a book that will prove entertaining and yet enlightening. The present volume by a noted English historian and political scientist happily serves both of these ends. Written in an easy style and filled with anecdotes culled from numerous sources including the author's own wide and varied experiences in the United States, the book is delightfully refreshing and entertaining. And replete with Professor Brogan's penetrating observations and analyses of American political life, the work may be read with considerable profit by all who are interested in the conduct of public affairs.

Some of the most lucid appraisals of the American scene have been made by foreign observers, probably because of their detached position and their freshness of viewpoint. *Politics in America,* while it fails to embody the shrewd Gallic insight of a de Tocqueville, the profundity of a Lord Bryce, or the scientific analysis of a Gunnar Myrdal, nevertheless follows in the tradition of these eminent writers by presenting a skillfully drawn picture of how our political institutions operate both at their worst and at their inspired best. Mr. Brogan wrote the present work primarily for the purpose of making the American political system intelligible to his fellow countrymen. There are few of us, however, on this side of the Atlantic who could not learn something of ourselves and our government from reading it. There is no reason, in fact, why it could not be used as a highly satisfactory text for the introductory government course in American colleges. It would certainly motivate more interest on the part of the students than some of the formal and dull texts in political science that many of us were exposed to during our college days.

Mr. Brogan begins his treatment of American political institutions by observing that the attention and reverence which have been focused on the Constitution have given a peculiarly legal character to the political life of the United States. The legal way of looking at political problems can be found in the great constitutional arguments which range from the Hamilton-Jefferson debates over loose versus strict construction, through the controversy over the nature of the union which preceded the Civil War, to the segregation issues now facing the Supreme Court. Although the author ventures no opinions as to the reason for this emphasis on the legalistic approach to political affairs, it might perhaps be said that the predominating influence of lawyers in American public life has been a major factor contributing to this result.

The author treats the three branches of government systematically and thoroughly; he discusses the party system, machines and bosses, the electoral process, political conventions and campaigns, and the relationship between politics and morals. In each instance, he draws heavily on the diaries and papers of

leading public figures in order to give his readers a more intimate, realistic and understandable view of the political process. When dealing with lawmaking, he emphasizes that the manners and morals of a people can never be molded by legislation, and that if a law runs contrary to the opinions, prejudices, tastes or habits of the general body of citizens, it will be neither honored nor obeyed—a lesson that the United States learned well from its sally into the field of prohibition.

Mr. Brogan constantly points out that comparisons between English and American political institutions can be misleading. His thesis, which few students of law and government would dispute, is that each system has its own logic and its own justification. He has little patience with those academic critics who would graft onto the American constitutional system the characteristics of the British parliamentary system. While he finds defects and inconsistencies in American political institutions and practices, he advocates no sweeping modifications, but on the contrary advises a cautious approach toward change. Observing that American political habits are on the whole good, he contends that such habits are too rare a thing to be thrown away in the world of today. "The American people are right not to let the best be the enemy, not only of the good, but even of the slight improvements that the system is capable of without changing its basic character." To this, Professor Brogan's countryman of two centuries ago, the great progenitor of modern conservatism, Edmund Burke, would have uttered a solemn "Amen".

HENRY J. SCHMANDT

St. Louis University
St. Louis, Missouri

A HALF CENTURY OF INTERNATIONAL PROBLEMS. A LAWYER'S VIEWS. *By Frederic R. Coudert. Edited by Allan Nevins. With an Introduction by Philip C. Jessup. New York: Columbia University Press. 1954. $4.00. Pages xix, 352.*

This volume contains the occasional papers of the senior partner of the firm of Coudert Brothers, founded in New York a century ago. The author is the son of the original founder and his book is dedicated to his three sons, "The Present Coudert Brothers". It is fortunate that the preparation and publication of this book was not delayed longer. A few months after it appeared, Mr. Coudert died at his home in New York on April 1, 1955. He had just passed his eighty-fourth birthday.

In one of his many inimitable addresses before groups of lawyers specializing in the law of nations, Mr. Coudert opened his remarks by saying "It is a rather serious charge to be told that one is an international lawyer. When another lawyer says that to me in a public place, I feel that he is aiming to get away with some of my best domestic clients." That witticism, typical of Mr. Coudert's style of speaking, was uttered twenty-eight years ago between the two world wars which so drastically changed our outlook upon world affairs. Today it is an element of national weakness that "domestic" lawyers do not take a greater interest and participate more actively in international affairs. They have left the study and exposition of this vital branch of public law almost completely to the academic scholars.

Mr. Coudert was one of a limited number of the legal profession who made his living by practicing international law. He was predestined for that career. Coudert Brothers opened an office at Paris in 1879 which has been retained up to the present time. It was routine for the head of the firm to commute between New York and Paris. Mr. Coudert's father rose to such eminence in international law that he was appointed one of the leading counsel for the United States in the Bering Sea Arbitration at Paris in 1893, along with other leaders of the American Bar such as James C. Carter.

Young Coudert, while a student in Columbia Law School, accompanied his father to Paris and received his first introduction to international law in that arbitration. He served as a volunteer officer in the Spanish-American War and at the age of twenty-eight was senior counsel before the Supreme Court of the United States in the Insular Cases involving the legal status of the islands and their inhabitants ceded by Spain to the United States by the Peace Treaty of 1898. His arguments helped to formulate American jurisprudence on these important constitutional and international problems. He had appeared two years earlier before the Supreme Court in cases involving international law and treaty interpretation.

Shortly after the outbreak of World War I, Mr. Coudert was retained as legal adviser to the British Embassy at Washington. The relations between the Government of the United States and the Allied Governments of Great Britain and France were dangerously involved in disputes over prize law and neutrality. With the permission of the Secretary of State, Mr. Coudert undertook "to be a buffer between the State Department and the Allied Governments and to absorb as much of the shock as possible". An account of his discussions in London and Paris was reported to the State Department in a long letter to Counselor Frank Polk dated September 28, 1915, which is published for the first time in the volume under review. Mr. Coudert's government clients also included France, Belgium, Italy and the Czarist Russian Government.

Mr. Coudert took an active interest in the work of the American Bar Association. Among other assignments, he was a member of its Committee on International Law for two terms and served for several years as a member of the Advisory Board of the JOURNAL. He was one of the original members of the American Society of International Law and was a popular toastmaster at a number of its annual banquets in Washington. He served as its President from 1942 to 1946 in succession to Secretary of State Cor-

dell Hull. In his inaugural presidential address before the society, Mr. Coudert defended his advocacy of collective security to avoid war in lieu of neutrality against the criticism that he was entering the domain of international politics rather than that of international law. "The two", he said, "are completely inseparable; to devise beautiful codes in a vacuum is a pleasant intellectual recreation, but it is not worth the time of the active, practical men who compose this Society and the American Bar Association. International law and international relations cannot be segregated in water-tight compartments. If the lawyers are to take the lead to which the traditions of their profession and their past influence entitle them, they must take a positive stand upon the problem of how to sanction international law."

The present papers deal with cases in which the author participated as counsel and with public questions upon which he spoke as advocate, on the following subjects: regulation of corporations; riparian rights; the Eighteenth Amendment; problems of an American empire; judicial reform; arbitration, international law and world peace, including correspondence with Admiral A. T. Mahan and John Bassett Moore not previously published; dangers and duties of neutral America; the League of Nations; totalitarian war and world order. The editor introduces each group of subjects with a historical setting.

This modest volume contains a relatively small number of papers selected from a greater number which Mr. Coudert accumulated during his long and active career. A more comprehensive treatment of his life and work should be published. It would be welcomed not only by the members of the American Bar, but by Mr. Coudert's world-wide circle of friends and associates.

GEORGE A. FINCH

Washington, D. C.

THE ILLEGAL TRIAL OF JESUS. *By Earle L. Wingo. Hattiesburg, Mississippi: Earle L. Wingo Publications, Inc. 1955. $3.00. Pages 142.*

The author's purpose and conclusion are manifest in the title of this book. On the frontispage are the words "A Lawyer Reviews THE ILLEGAL TRIAL OF JESUS". The author is a past President of the Mississippi State Bar Association and a practitioner of extensive experience and high standing at the Bar. He is the author also of *Mississippi Criminal Law and Procedure,* which has been accepted as a standard text by the Bench and Bar of the state.

The author is also an active member of the Baptist Church, Superintendent of Adult Sunday School and Director of Adult Training Union. His attitude, therefore, is evangelistic as well as juristic. His views and arguments are those of a lawyer and professing Christian. On numerous occasions he interrupts his legal arguments to preach the Gospel.

This combination of religious and legal attitude is not without some benefit. In order to understand the great events of history, we must, to some degree, be able to recapture the spirit of the times in which those events occurred. And the great public problems of the time and country of Jesus involved religious issues.

During the period of history with which this book deals, Jerusalem was under the domination of Rome. Judea was a province of the Roman Empire. The Roman Empire was ruled by a military despotism. Judea, however, was and had been for centuries a theocracy. Rome had granted to Judea a certain amount of self-government. The Roman rulers, however, had slight respect for the religious concepts and interests of the Hebrews. The most ardent concern of the Jews of that day was for a Messiah who would lift the Roman yoke from their necks and reestablish their kingdom. It was a worldly kingdom, however, that they thought of, and the hierarchy of the church were disappointed and repelled by the utterances of Jesus regarding a spiritual kingdom. After two thousand years of Christian teaching, those who really understand and accept the spiritual significance of Christianity are few indeed.

The author of this little book has tried to give his readers a clear perception of what the issues and emotions were that brought about the crucifixion of Jesus. His own religious attitude has no doubt been of service in portraying the intense religious feelings of the men who accused the teacher from Nazareth. He says in his preface:

> Many years ago, after having unreservedly accepted Jesus Christ as my personal Savior, I began an intensive study of the conditions which obtained in Judea, during the life of Jesus, with a view of trying to understand the motives which prompted the early Jewish religious groups, and the members of the Roman society, to maintain such an apparent hatred of the Christ. And now, having become familiar with the history of their background, character and teachings, I feel that others should have a truthful insight to those conditions in order that they, too, might better understand the cause for so much unrest which definitely permeated the Judean air when Jesus was placed on trial before the Sanhedrin, or ecclesiastical court, and also before Pontius Pilate, the Roman Governor.

The writer's style is vivid and interesting and, in spite of some solecisms and slips of diction, his argument moves sprightly and holds the reader's interest to the end. After a brief account of the birth of Jesus and the conditions in Judea at that time, the author lists ten principal participants in the trial and condemnation:

1. Judas Iscariot, the disciple who betrayed Jesus.
2. Annas, a leader of the Sadducees and the "political boss of Judea".
3. Caiaphas, son-in-law of Annas and high priest who presided at the trial before the Sanhedrin.
4. Pontius Pilate, Roman Governor of Judea, to whom appeal was made for the order of crucifixion.
5. Herod, Tetrarch of Galilee, to whom Jesus was also taken for trial.
6. Tiberius Caesar, Emperor of Rome.

7. The Great Sanhedrin, the Jewish ecclesiastical court, which condemned Jesus for blasphemy.

8. The Sadduceees, a secular and materialistic party which predominated in the Jewish court.

9. The Pharisees, the self-righteous ritualists whom Jesus had exposed and condemned.

10. "The unruly, cruel, inhuman mob", who called for the crucifixion.

In ten thumbnail sketches, Mr. Wingo portrays the character and influence of those men and parties, together with the participation of each in the great drama.

The book lists the details in which the arrest and persecution of Jesus violated the Jewish law. It then specifies the four times when Pontius Pilate pronounced Jesus not guilty and shows clearly that Pilate, in spite of such pronouncements, finally consented to the order of crucifixion because the accusers said "If thou let this Man go, thou art not Caesar's friend; whosoever maketh himself a king speaketh against Caesar."

The trial and condemnation of Jesus of Nazareth has challenged many secular and religious historians, students of jurisprudence, and lawyers. One of the earlier publications on this subject was entitled *The Trial of Jesus as Viewed by a Lawyer*. That author opened the discussion with the question, Was the crucifixion of Jesus in accordance with the law of his day? Mr. Wingo, however, recognizes no question and proceeds directly to show the illegality of the proceedings and the crucifixion. He sustains his thesis. Jesus was accused because of bigotry and condemned for political expediency. The trial is history's most tragic instance of tyranny—the tyranny of the dictator and the tyranny of the mob. The law was ignored and justice was violated. Man cannot violate truth and justice without crucifying what is most divine in his own nature.

This book should be of great assistance to preachers and religious teachers. In his preface, the author expresses the hope "that many who shall read this story of His indescribable suffering and humiliations, will come to the full realization that, after all, the one and only hope remaining for a restless, war-ridden, sin-cursed humanity can be found in Him as their Redeemer and Savior."

Those who read the book with the unemotional attitude of secular historians or legal scientists may not be moved to help fulfill the hope of the author as a religious evangelist, but they still may gain a great benefit from a reading of this Christian lawyer's presentation. Even those who do not accept Jesus "as their Redeemer and Savior", in the religious and dogmatic sense of those words, should still be interested in the account of the tragic persecution of the world's greatest religious and social teacher and should be inspired by the manner in which the victim of injustice was able to transcend the woes of the world.

The crisis which confronts free men today is the terrible threat of obliteration of western civilization. Western civilization is, in essence, Christian civilization, although western civilization grew from many other sources of culture. Its emphasis upon the dignity and responsibility of the individual and the rights and privileges which follow from that emphasis came from Christian teaching through the men of the church who established the European community. The personality which was the very source of Christianity must be presented anew from time to time. We dare not allow it to become submerged in the materialism and secularism of the modern Sadducees nor in the cynicism and outworn formalism of the modern Pharisees.

ROBERT N. WILKIN

Charlottesville, Virginia

PROBLEMS OF LAW IN JOURNALISM. *By William F. Swindler. New York: The Macmillan Company. 1955. $5.75. Pages 551.*

This purports to be a handbook on problems of law in the field of journalism, written by a journalist for journalists. Even so, it has a real value for lawyers. This is to be found chiefly in the selection of topics for discussion rather than in the discussions—or at least some of them—themselves.

The author is Director of the School of Journalism of the University of Nebraska. He has also taught at the Universities of Idaho and Missouri and has had wide experience as a reporter and editorial writer. He has long sensed that a well-trained journalist should be aware of the basic principles of law affecting his calling, as well as of trends in the law, as evidenced by legislation and judicial decision in recent years.

More than half of the book is devoted to a discussion of the law of libel. These sections on libel are adequate to alert the journalist to ever-lurking dangers, as well as to sound methods of avoiding such dangers in his daily work of gathering, writing and editing the news or writing editorial comment. Likewise, the chapters on libel are so organized as to be of real use to a lawyer who is called upon to look into the subject for the first time.

When Professor Swindler takes up other problems he is not so sure of himself or so wise in his selection of cases. The cases he has selected, however, if used as a basis for further research or study, are valuable.

As every lawyer knows, it is not unusual for important issues to be disposed of at various stages in a proceeding before the final decision is handed down. It is not safe for a lawyer to rely on a trial examiner's report, findings and conclusions in an administrative proceeding as the author has done without reference to what happened elsewhere in respect of that proceeding or that particular report.

The chapters on "Administrative Law and Business Practice" and "Labor Relations of Newspapers" are illustrative of these points.

The *Lorain Journal* case is significant, not in the fact that the Supreme Court held that the antitrust laws apply to a newspaper found guilty of attempting to monopolize. The real significance of that contró-

versy is to be found in the district judge's denial of the Government's motion for a temporary injunction. In that motion, the Government sought an order of compulsory publication through which the defendant pending trial would be compelled to accept without question the advertising of anyone who advertised in any other medium competitive with it. No such order had ever before been sought and the trial judge properly overruled the motion.

In a labor case referred to and as to which the author cited almost *in toto* the trial examiner's report, he failed to quote from the decision of the district judge enjoining the offending union from continuing certain of the violations charged during the pendency of the proceedings before the board, or from the district judge's decision holding the union in contempt of his injunction decree, or from the decision of the court of appeals reversing the board in its reliance on the trial examiner's proposed finding on the key issue of the controversy and remanding the case to the board with instructions to expand its order so as to require the union to cease and desist from its refusal to bargain in good faith.

These illustrations highlight the difficulties facing a layman who attempts to write an authoritative work on the law pertaining to any field, whatever the field may be. Even so, the author is to be congratulated for attempting something no lawyer has yet undertaken. He has blazed a path to which those trained in the law and dealing with many, if not all the problems he discusses, should give their attention.

ELISHA HANSON
Washington, D. C.

Activities of Sections and Committees

(Continued from page 527)

on the present staff necessitate spreading the Association's efforts rather thinly in certain territories.

It is suggested that every effort possible be expended to broaden the support of this program. Some bold action may be necessary, but this Traffic Court Improvement Program deserves consideration by all organizations which have an interest in the traffic problem. We certainly want to help in this program and hope that its effectiveness can be tremendously increased within the near future.

Other contributors to the program are Esso Safety Foundation, American Trucking Association, Inc., Farmers Insurance Group, Illinois Agricultural Association, Bureau of Public Roads, Automotive Safety Foundation, Association of Casualty and Surety Companies and Liberty Mutual Insurance Company.

SECTION OF INSURANCE LAW

■ The Insurance Section participated at the Regional Meeting in Phoenix and will participate in the next Regional Meetings at Cincinnati, St. Paul-Minneapolis, New Orleans and Hartford.

One of the high points of the Cincinnati meeting will be a trial tactics panel. The subject will be "Expert Testimony in Insurance Cases". The first speaker will be Wayne Stichter, of Toledo. His subject will be "The Function of Expert Testimony". Edward D. Bronson, of San Francisco, will then discuss "The Medical Expert". "The Scientific Expert" will be described by Abe R. Peterson, of Chicago, and concluding remarks will be made by Wayne Ely, of St. Louis. His topic will be "Abuses of Expert Testimony". The moderator will be Arthur F. Lederle, Senior United States District Judge of the Eastern District of Michigan, Detroit, Michigan.

The use of expert testimony is not limited, of course, to the insurance practice but is a universal procedure in cases requiring a technical approach. It is believed that this program will be of particular interest to all attorneys interested in trial practice, and all members of the Association are invited to attend this panel, as well as subsequent panels presented by the Section.

Officers, council members and committee chairmen of the Section attended the Section's Spring meeting in New York on May 15 at the Plaza. The Section Chairman, Walter A. Mansfield, Detroit, discussed plans for the Annual Meeting of the Association which is to be held in Philadelphia. Headquarters for the Insurance Section will be at the Benjamin Franklin Hotel. Section arrangements in Philadelphia will be handled by J. Harry LaBrum.

SECTION OF MUNICIPAL LAW

■ The Liaison Committee of the Section of Municipal Law cooperating with the Investment Bankers Association has suggested legislation to curb the filing of so-called nuisance suits in connection with bond issues for public improvements. Another recommendation of the Liaison Committee suggests suitable legislation authorizing facsimile signatures where several signatures are required on large bond issues. It is of interest to note at this time that two such bills following these recommendations have been introduced in the legislature of Texas. It is hoped that if other states follow those that have passed such legislation this will have a salutary effect and that there will be a general acceptance of the practical usefulness of the proposed legislation.

Review of Recent Supreme Court Decisions

George Rossman
EDITOR-in-CHARGE

Administrative Law . . . *review of natural gas rate by court of appeals*

■ *Federal Power Commission* v. *Colorado Interstate Gas Company,* 348 U.S. 492, 99 L. ed. (Advance p. 401), 75 S. Ct. 467, 23 U. S. Law Week 4135. (No. 45, decided March 28, 1955.) *Judgment of the United States Court of Appeals for the Tenth Circuit reversed.*

A court of appeals, in reviewing a natural gas rate reduction order of the Federal Power Commission, may not consider *sua sponte* an objection not urged before the Commission in the application for rehearing.

In 1951, the Commission had approved merger of the respondent with another natural gas company. One of the terms of the Commission's approval provided that any loss from certain gasoline operations, taken over by respondent in the merger, be excluded from respondent's cost of service in any natural gas rate proceeding. In 1952, the Commission made a rate investigation. The Commission and the respondent disagreed as to the proper accounting method to allocate the gasoline costs for that year; respondent's method showed no loss suffered from the gasoline operations, but the Commission's method resulted in a loss of $421,537 and, pursuant to the merger order, the Commission excluded that sum from respondent's cost of service. After deducting the gasoline costs, the Commission found excess revenues of over $3,000,000, and accordingly ordered a rate reduction eliminating that excess. Respondent applied for a rehearing under Section 19 (a) of the Natural Gas Act, arguing that the Commission's method of allocation of the costs of the gasoline operations was improper; there was no contention that the exclusion of the loss from the gasoline operations was invalid. The Court of Appeals generally upheld the Commission's findings and order, but, *sua sponte,* it held that the gasoline losses must be added to respondent's cost of service in spite of the action taken in the merger proceeding.

Mr. Justice BURTON, speaking for the Supreme Court, reversed. The Court based its decision on Section 19 (a) of the Natural Gas Act, which provides that ". . . No objection to the order of the Commission shall be considered by the court [of appeals] unless such objection shall have been urged before the Commission in the application for rehearing. . . ."

Respondent's objection to the Commission's method of allocating the gasoline costs did not amount to a claim that the merger condition was invalid, the Court said. Respondent's second contention, that even if it were barred from attacking the validity of the merger condition the court of appeals could raise the same objection *sua sponte,* was expressly overruled by the statutory language, it was said, and to allow the court of appeals to do so would seriously undermine the policy of the act requiring a party to exhaust its administrative remedy before seeking judicial review.

Mr. Justice HARLAN took no part in the consideration or decision of the case.

The case was argued by Warren E. Burger for petitioner and by James Lawrence White for respondent.

Constitutional Law . . . *gambling tax and self-incrimination*

■ *Lewis* v. *United States,* 348 U. S. 419, 99 L. ed. (Advance p. 352), 75 S. Ct. 415, 23 U. S. Law Week 4119. (No. 203, decided March 14, 1955.) *Judgment of the Court of Appeals for the District of Columbia Circuit affirmed.*

Nothing in the Constitution prevents Congress from levying a tax on the business of accepting wagers in the District of Columbia even though another section of the United States Code makes that business a felony. The Court here sustained such a tax over arguments that it was a penalty disguised as a tax, a violation of the privilege against self-incrimination and of the Fourth Amendment's ban on unreasonable search and seizure.

Petitioner was charged with engaging in the business of accepting wagers without paying the tax. The Municipal Court sustained a motion to dismiss the information filed against him, the District Court of Appeals reversed and was sustained by the Circuit Court of Appeals.

The Supreme Court's opinion was delivered by Mr. Justice MINTON. The Court relied on *United States* v. *Kahriger,* 345 U. S. 22, which dealt with the same tax levied in Pennsylvania. The fact that here the violation took place in the District of Columbia, where wagering is a federal crime rather than a state offense, was immaterial, the Court said. The Federal Government may tax what it also forbids. The Court could find nothing retroactive in the statute, and declared that the fact that petitioner would be required to disclose his unlawful business if he paid the

Reviews in this issue by Rowland Young.

tax did not amount to compulsory self-incrimination. "If petitioner desires to engage in an unlawful business, he does so only on his own volition" the Court said. "There is nothing compulsory about it, and, consequently, there is nothing violative of the Fifth Amendment." As for the argument that purchase of the required stamp and exhibition of it at his place of business would furnish cause for issuance of a search warrant, the Court replied that the petitioner was merely arguing that if he had a stamp he might get in trouble. "Since petitioner is without a stamp, he is not in a position to raise the question as to what might happen to him if he had one" the Court concluded.

Mr. Justice FRANKFURTER dissented on the basis of his dissent in *United States* v. *Kahriger*.

Mr. Justice BLACK, joined by Mr. Justice DOUGLAS, wrote a dissenting opinion which argued that, by paying the tax, petitioner would be compelled to supply evidence useful to convict him of a felony, which is a violation of the Fifth Amendment.

The case was argued by Walter E. Gallagher for petitioner and by Beatrice Rosenberg for the respondent.

Constitutional Law . . . *state regulation of sale of eyeglasses*

■ *Williamson* v. *Lee Optical of Oklahoma, Inc., Lee Optical of Oklahoma, Inc.* v. *Williamson,* 348 U. S. 483, 99 L. ed. (Advance p. 395), 75 S. Ct. 461, 23 U. S. Law Week 4139. (Nos. 184 and 185, decided March 28, 1955.) *Judgment of the United States District Court for the Western District of Oklahoma reversed in No. 184 and affirmed in No. 185.*

This case upheld the validity of an Oklahoma statute that made it unlawful for anyone not a licensed optometrist or ophthalmologist to fit lenses to a face or to duplicate or replace lenses except upon written prescription of a licensed ophthalmologist or optometrist. (An ophthalmologist is a doctor that specializes in the care of the eyes; an optometrist examines eyes and fills prescriptions for eyeglasses; an optician is an artisan that grinds lenses and fits them into frames.) The effect of the statute was to forbid the optician from fitting or duplicating lenses without a prescription. The District Court rebelled at the notion that a prescription should be required "to take old lenses and place them in new frames and then fit the completed spectacles to the *face* of the eyeglass wearer". Such a requirement, it held, was not "reasonably and rationally related to the health and welfare of the people".

In reversing, the Supreme Court, speaking through Mr. Justice DOUGLAS declared that the statute might exact a "needless, wasteful requirement", but that it was nevertheless for the legislature, not the courts, "to balance the advantages and disadvantages".

The Court could find no infringement of equal protection in the fact that the statute did not apply to sellers of ready-to-wear glasses—the legislature might find that sale of ready-to-wear glasses presented problems of regulation different from the other branch of the eyeglass market.

Other provisions of the statute forbidding the solicitation of sales of frames or the renting of space in retail stores to persons "purporting to do eye examination or visual care" were also held to be within the police power of the state.

Mr. Justice HARLAN took no part in the consideration or decision of the cases.

The cases were argued by James C. Harkin for Williamson and Dick H. Woods for the Lee Optical Company.

Labor Law . . . *state injunction in labor dispute*

■ *Weber* v. *Anheuser-Busch, Inc.,* 348 U. S. 468, 99 L. ed. (Advance p. 386), 75 S. Ct. 480, 23 U. S. Law Week 4150. (No. 97, decided March 28, 1955.) *Judgment of the Supreme Court of Missouri reversed and remanded.*

A state injunction against a strike by employees of the respondent brewers was held to be an invasion of a field reserved for the National Labor Relations Board in this case, which arose out of a jurisdictional dispute between two American Federation of Labor unions.

The petitioner International Association of Machinists (IAM) and the United Brotherhood of Carpenters and Joiners both claimed the right to do millwright work for respondent, which requires a large amount of such work to be performed by outside contractors. In 1949, Anheuser executed a collective bargaining agreement with IAM in which it agreed that the work would be given only to contractors that had collective agreements with IAM. The Carpenters protested and the clause was deleted from Anheuser's 1950 contract with IAM. The clause was, however, reinstated in 1951, and Carpenters again protested, this time threatening that they would sign no contract with Anheuser covering its employees who were members of the Carpenter's union until the clause was stricken. In 1952, Anheuser refused to insert the clause in its contract with IAM, and IAM finally went on strike as a result.

Anheuser filed a charge of an unfair labor practice under Section 8 (b) (4) (D) of the Taft-Hartley Act. The Board quashed the notice of a hearing on the ground that no dispute existed within the meaning of that subsection. This was the only unfair labor practice charge filed with the Board and the only one on which the Board acted.

Anheuser obtained an injunction from a state court, prohibiting IAM's conduct and the Missouri Supreme Court, on appeal by IAM, affirmed award of a permanent injunction on the ground that the union's conduct was a violation of the state's restraint of trade statute. The court referred to the Board's ruling that "no labor dispute existed between these parties and that no unfair labor practices were there involved".

When the case reached the Supreme Court on certiorari, Mr. Justice FRANKFURTER, speaking for the

Court, reversed and remanded. The Court held that the state's jurisdiction had been pre-empted by authority vested in the National Labor Relations Board. The Board had merely ruled that there was no violation of Subsection (D) of Section 8 (b) (4), the Court said; it had not passed on the existence of a violation of Subsections (A) and (B) of that section since Anheuser had not raised the question. Congress has given the Board the responsibility of determining such issues in the first instance, the Court declared.

The case was argued by Robert A. Roessel for petitioner and by Mark D. Eagleton for respondent.

Labor Law . . . *jurisdiction of federal court to entertain suit for breach of collective bargaining agreement*

■ *Association of Westinghouse Salaried Employees* v. *Westinghouse Electric Corporation,* 348 U. S. 437 99 L. ed. (Advance p. 368), 75 S. Ct. 488, 23 U. S. Law Week 4141. (No. 51, decided March 28, 1955.) *Judgment of the United States Court of Appeals for the Third Circuit affirmed.*

Though the members of the Court disagreed as to what ground to rest the decision upon, the Supreme Court here affirmed the court of appeals holding that a federal court had no jurisdiction to entertain a suit brought by an unincorporated labor union for breach of the employment contracts of its members.

The union contended that the employer violated the employment contracts by refusing to pay employees' wages for April 3, 1951, when they were absent from work not on furlough or leave of absence. No reason was given for the absence. The employees were not parties to the suit. The court of appeals dismissed for lack of jurisdiction, adopting an "eclectic theory" that, while the collective bargaining agreement obligates the employer to include in the contracts of hire with each employee the terms settled between the union and the employer, the collective contract itself is not a contract of hire. Accordingly, the court reasoned, if there was a breach of contract in this case, it was a breach of the contracts of hire, and Section 301 of the Taft-Hartley Act grants jurisdiction to federal courts only over cases involving breaches of the collective bargaining contracts between the union and the employer.

Mr. Justice FRANKFURTER announced the judgment of the Court and an opinion in which Mr. Justice BURTON and Mr. Justice MINTON joined. This opinion went somewhat extensively into the problems raised by the case and into the legislative history of Section 301 in an effort to determine the congressional intent. Rejecting the view that Section 301 created a body of "federal substantive law" to be administered by the federal courts, the opinion also rejected the "eclectic theory" of the court of appeals, saying that the legislative history shows no signs that Congress intended to confer federal jurisdiction over suits such as this one.

Mr. Justice HARLAN took no part in the consideration or decision of the case.

The CHIEF JUSTICE, joined by Mr. Justice CLARK, concurred in the result, declaring that the only question was one of statutory interpretation. "For us the language of §301 is not sufficiently clear to indicate that Congress intended to authorize a union to enforce in a federal court the uniquely personal right of an employee. . . ."

Mr. Justice REED, in a concurring opinion, found no constitutional problem. For him, although suits under Section 301 might be determined largely upon state law, the federal courts applying state law would be doing so because it supplements and fulfills federal policy, as expressed in the act. He concurred in the judgment because the alleged violation was of a contract between an employer and an employee—"a situation that is not covered by the statute".

Mr. Justice DOUGLAS, joined by Mr. Justice BLACK, dissented. They took the view that "what the union obtains in the collective agreement it should be entitled to enforce or defend in the forums which have been provided. When we disallow it that standing, we fail to keep the law abreast of the industrial developments of this age."

The case was argued by David E. Feller for petitioner and by Mahlon E. Lewis for respondent.

Selective Service . . . *conscientious objectors*

■ *Witmer* v. *United States,* 348 U. S. 375, 99 L. ed. (Advance p. 327), 75 S. Ct. 392, 23 U. S. Law Week 4121. (No. 164, decided March 14, 1955.) *Judgment of the Court of Appeals for the Third Circuit affirmed.*

In four cases decided on March 14, the Supreme Court spelled out a further definition of the rights of men claiming exemption from military service as conscientious objectors under the Universal Military Training and Service Act.

Section 6 (j) of the act provides that no person shall be required to undergo combatant training or service in the Armed Forces who "by reason of religious training and belief, is conscientiously opposed to participation in war in any form". The registrant claiming to be a conscientious objector fills out a questionnaire in which he states his religious beliefs and cites evidence to demonstrate his sincerity. After a personal interview, the local board determines his classification. If the registrant's claim is denied, he has a right of appeal to the appeal board, which, before reaching a final decision, refers the file to the Department of Justice for "inquiry and hearing". The Justice Department investigates and refers its findings to a hearing officer before whom the registrant may appear. The hearing officer reports to the Department which then makes its recommendation to the appeal board; the appeal board is not bound to follow the Justice Department's recommendation.

In the *Witmer* case, the registrant

was a member of the Jehovah's Witnesses sect. He first asked for classification as a farmer, stating that he intended to cultivate his father's farm (unworked for twenty-three years), promising to increase production and "contribute a satisfactory amount for the war effort and civilian use". He expressly disclaimed any ministerial exemption although he did claim to be a conscientious objector. The local board classified him I-A, and he appealed, this time requesting classification as a minister. When he appeared before the Department of Justice hearing officer, Witmer asserted he could not engage in noncombatant service since "the boy who makes the snowballs is just as responsible as the boy who throws them". The Department recommended that his claim be denied, and the appeal board retained him in the I-A classification. He was convicted of failing to submit to induction. The Court of Appeals affirmed.

The conviction was affirmed by Mr. Justice CLARK, speaking for the Court. The Court's decision rested on the inconsistency between the statements Witmer made in filling out his questionnaire and his later position before the Department of Justice: he had first sworn that the ministerial exemption did not apply to him, yet two month's later, after his claim for exemption as a farmer had been denied, he claimed to be a full-time minister. At first he had promised to "contribute a satisfactory amount to the war effort" and then had refused even noncombatant service. This inconsistency, the Court said, "cast considerable doubt on the sincerity of petitioner's claim" and supported the Board's decision.

Mr. Justice BLACK and Mr. Justice DOUGLAS dissented without opinion.

Mr. Justice MINTON noted that he concurred in the result "Because the Board's order was an allowable one . . . and not arbitrarily taken."

The case was argued by Hayden C. Covington for petitioner and by J. F. Bishop for respondent.

■ *Sicurella v. United States,* 348 U. S. 385, 99 L. ed. (Advance p. 333), 75 S. Ct. 403, 23 U. S. Law Week 4124. (No. 250, decided March 14, 1955.) *Judgment of the Court of Appeals for the Seventh Circuit reversed.*

In the second conscientious objector case, the registrant had been brought up as a Jehovah's Witness. He claimed exemption from military service, stating that he believed in the use of force "Only in the interests of defending Kingdom Interests, our preaching work, our meetings, our fellow brethren and sisters and our property against attack. I (as well as all Jehovah's Witnesses) defend those when they are attacked and are forced to protect such interests and scripturally so."

The registrant was convicted of failure to report for induction and the conviction was affirmed by the Court of Appeals.

Unlike the *Witmer case,* there was no question of the registrant's sincerity. The Department of Justice recommended, however, that his claim be denied, on the ground that the registrant's beliefs did not amount to conscientious opposition to "participation in war in any form", the statutory prerequisite to deferment.

Again speaking through Mr. Justice CLARK, the Court had little trouble in finding grounds for reversal of the conviction for refusal to report for induction. The registrant's willingness to use force in defense of "Kingdom Interests" was not the kind of participation in war that Congress had in mind when it wrote the statute, the Court held, and the denial of the deferment was so far removed from congressional intent that it was erroneous as a matter of law. "The test is not whether the registrant is opposed to all war, but whether he is opposed, on religious grounds, to *participation* in war" the Court declared, and by war, Congress meant "real shooting wars", not spiritual Armageddons where the Witnesses will fight "without carnal weapons".

Mr. Justice REED, in a dissenting opinion, argued that Sicurella's willingness to use force in defense of "Kingdom Interests" was inconsistent with his claimed opposition to war.

Mr. Justice MINTON, also dissenting, argued that the board's refusal to grant the deferment was an allowable one in view of the registrant's admission that he would participate in a religious war where the interests of his sect were involved. The petitioner was reserving the right to choose the wars in which he will fight, the dissent declared, and this does not conform to the congressional test.

The case was argued by Hayden C. Covington for petitioner and by John F. Davis for respondent.

■ *Simmons* v. *United States,* 348 U. S. 397, 99 L. ed. (Advance p. 339), 75 S. Ct. 397, 23 U. S. Law Week 4127. (No. 251, decided March 14, 1955.) *Judgment of the Court of Appeals for the Seventh Circuit reversed.*

The problem in the third of the conscientious objector cases arose from the failure of the Department of Justice to provide the registrant with a fair résumé of the adverse information in the file on him prepared by the FBI. Petitioner registered for the draft in 1948; at that time he stated that he believed his classification should be I-A, and he was so classified. In 1949, the registrant married and was granted a dependency deferment that terminated on October 22, 1951. Within a week, he filed a request for a conscientious objector deferment, claiming that he had become a Jehovah's Witness in 1949. He was classified I-A by his local board, appealed and appeared at a hearing before the Department of Justice. He did not request a summary of the evidence in his FBI file until the hearing; the hearing officer answered one question about the file and then changed the subject. The file contained evidence tending to show that the registrant had mistreated his wife and that prior to his recent religious activities, he had been "a rather heavy drinker and

crap shooter in and around local taverns and pool halls".

The registrant was convicted of failure to report for induction and the conviction was affirmed by the court of appeals.

Mr. Justice CLARK, speaking for the Court, reversed the conviction on the ground that the registrant had never received a fair résumé of the contents of the FBI report on him. He had thus had no opportunity to explain it, rebut it or otherwise detract from its damaging force. "The Congress, in providing for a hearing, did not intend for it to be conducted on the level of a game of blindman's buff" the Court observed.

Mr. Justice BLACK and Mr. Justice DOUGLAS announced that they joined in the opinion and the judgment, "adhering to their dissent in Nugent v. United States, 346 U. S. 1, 13."

Mr. Justice REED announced that he would have affirmed on the ground that as the registrant had requested no summary of the file it was not necessary to furnish more to him than the hearing officer did.

The case was argued by Hayden C. Covington for the petitioner and by Robert W. Ginnane for the respondent.

▪ *Gonzales* v. *United States*, 348 U. S. 407, 99 L. ed. (Advance p. 345), 75 S. Ct. 409, 23 U. S. Law Week 4130. (No. 69, decided March 14, 1955.) *Judgment of the Court of Appeals for the Sixth Circuit reversed.*

The fourth of the conscientious objector cases raised the question of the registrant's right to receive a copy of the recommendation of the Department of Justice to the appeal board.

Gonzales had been reared in the Catholic faith. In 1948, he married a member of the Jehovah's Witnesses sect and began to receive "private instruction" in the Bible from a member of that sect in November, 1949. On January 4, 1950, he registered for the draft and on the following month was ordained as a minister of the Witnesses. He was convicted of failure to report for induction after the appeal board refused to change his I-A classification. The recommendation of the Department was based on the fact that the registrant had become a member of the sect one month after his registration for the draft, although his wife had been a member for many years. No copy of the Department's recommendation was given to the petitioner prior to the appeal board's decision.

Mr. Justice CLARK reversed the conviction for the Supreme Court, holding that the failure to give the registrant a copy of the Department's recommendation deprived him of a chance to make a meaningful answer. The registrant has a right to file a statement with the appeal board, the Court said. "Just as the right to a hearing means the right to a meaningful hearing . . . so the right to file a statement before the Appeal Board includes the right to file a meaningful statement, one based on all the facts in the file and made with awareness of the recommendations and arguments to be countered".

Mr. Justice REED, joined by Mr. Justice BURTON, dissented on the ground that there was no statutory or administrative requirement that the registrant receive a copy of the report.

Mr. Justice MINTON dissented on the ground that the regulations did not require the Department to submit a copy of its recommendations to the registrant and the action of the Board was not arbitrary or capricious.

The case was argued by Hayden C. Covington for petitioner and by John F. Davis for the respondent.

Junior Bar Conference Notice of Elections

▪ At the Annual Meeting in Philadelphia in August, 1955, there will be an election for the national offices of Chairman, Vice Chairman and Secretary to serve during the calendar year 1956. In addition, Council representatives will be elected from the following circuits: One, Three, Five, Seven, Nine, the District of Columbia, and the Fifth and Eighth-at-large. ON OR BEFORE JUNE 15, 1955, A NOMINATING PETITION MUST BE SUBMITTED IN ORDER FOR A CANDIDATE TO BE CONSIDERED BY THE NOMINATING COMMITTEE FOR NATIONAL OFFICES. Such petitions must be signed by at least twenty members of the Conference, and such petitions should be submitted to the Chairman in the manner set forth by Article 33, Section 4, Junior Bar Conference By-Laws. Nominating petitions in the form required by the By-Laws must also be submitted to the Chairman for the various offices of council representative and must be signed by at least five members of the Conference in the circuit affected. ALL SUCH PETITIONS SHOULD BE SUBMITTED TO THE CHAIRMAN, *Stanley B. Balbach, 102 North Broadway, Urbana, Illinois,* NOT LATER THAN JUNE 15, 1955.

THOMAS G. MEEKER
National Secretary

What's New in the Law

The current product of courts, departments and agencies

George Rossman • EDITOR-IN-CHARGE
Richard B. Allen • ASSISTANT

Attorneys . . .
disbarment

■ The Supreme Court of Alabama has held that the legislature may properly impose a statute of limitations on disbarment proceedings, rejecting the theory in some jurisdictions that a statutory limitation on disbarment is an unconstitutional interference of the legislative with the judicial power.

The charge was that the attorney had in 1946 accepted a fee to contest a will. The client from whom the fee was taken, however, had no standing to commence a will contest, but the attorney refused to return the retainer.

The disbarment proceedings were begun in 1950, but ran afoul of an Alabama statute prescribing a limitation period of three years. The board of commissioners of the State Bar nevertheless disbarred the attorney, holding that the legislative department is incompetent to attempt to regulate the disbarment of attorneys.

But the Court ruled that the legislative department is competent, within certain limits, to prescribe minimum qualifications for admission and grounds for disbarment, and to prescribe procedure, as long as the regulations do not interfere with the inherent power of the judiciary ultimately to determine who shall practice before it. The Court refused to hold that the attorney's offense was a continuing one which would bring him within the limitation period.

(*Ex parte Dozier,* Sup. Ct. Ala, January 19, 1953, rehearing denied February 24, 1955, Foster, J., 77 So. 2d 903.)

Editor's Note: Virtually all the material mentioned in the above digests appears in the publications of the West Publishing Company or in The United States Law Week.

Attorneys . . .
unauthorized practice

■ A Mexican lawyer, not admitted in New York, is not authorized to give legal advice or render legal services to the public, according to a recent decision of the New York County Supreme Court, Special Term. "Advice given to the public by one holding himself out to be a 'consultant in the law of his specialty,' although not duly admitted to the bar of this state, constitutes the unlawful practice of law", the Court declared.

The lawyer involved, a Mexican citizen, was admitted in Mexican courts. He maintained offices in New York and advertised regularly in metropolitan papers, offering his services for consultation and legal advice, principally regarding Mexican divorces.

In granting a motion to punish for contempt, the Court approved an agreement which had been assented to by the Mexican practitioner. This confines his legal advice and services to duly-admitted New York lawyers or to other admitted attorneys who "occasionally seek his advice concerning the law of Mexico". He also agreed to discontinue advertising, except in legal papers wherein he would state that his services were offered only to lawyers.

The Court imposed no fine in view of the lawyer's lack of knowledge about how far he might go and his prompt consent to the relief requested by the petitioner.

(*Matter of New York County Lawyers' Association,* Sup. Ct., N.Y. Co., March 8, 1955, Eder, J.)

Corporation Law . . .
directors' terms

■ Dealing with litigation arising from the recent struggle for control of Montgomery Ward & Company, the Supreme Court of Illinois, with one judge dissenting, has held that Illinois's statutory provision permitting election of directors for staggered terms is unconstitutional.

The statute found wanting provides that a corporation with a board of directors of nine or more may adopt staggered terms for directors, dividing the directors into three equal (or nearly equal) classes and electing one class annually.

A provision of the Illinois Constitution makes mandatory the use of cumulative voting in election of directors. It declares that "every stockholder shall have the right to vote, in person or by proxy, for the number of shares of stock owned by him, for as many persons as there are directors or managers to be elected, or to cumulate said shares, and give one candidate as many votes as the number of directors multiplied by the number of his shares shall equal, or to distribute them on the same principle among as many as he shall think fit. . . ."

Montgomery Ward is incorporated in Illinois and has a board of nine directors divided into three classes. Seeking to gain control of the corporation, the plaintiffs sought a declaratory judgment that the legislatively-permitted staggered terms violated the constitutional provision guaranteeing cumulative voting.

The Court, noting that approximately 250 per cent as many votes are required to elect a single director under the staggered system as would be necessary if all nine were elected at the same time, agreed with this contention and ruled that if stockholders are permitted to vote at an annual meeting for only one third of the total number of directors, the stockholders are thereby deprived of

the benefit of cumulative voting under the Constitution. Consequently, the Court declared, the statute, "in authorizing the classification of directors, is inconsistent with the constitutional right of a stockholder to cumulate his shares through multiplying them by the 'number of directors' and cannot be sustained".

Faced with a vacuum of precedent, the Court relied on records of debates and contemporary newspaper editorials to determine what the state's 1870 constitutional convention meant by the provision. From these sources, it found that the understanding was that all directors would be elected annually.

The Court further declared that it was of no moment that the practice of staggered terms existed at the time of the convention and that the Constitution it adopted did not expressly prohibit it, or that the legislation authorizing the practice had stood for many years without challenge. Neither, the Court remarked, was it determinative that thirteen members of the constitutional convention also served in the first subsequent session of the legislature which enacted the staggered-term statute.

(*Wolfson et al.* v. *Avery et al.*, Sup. Ct. Ill., April 15, 1955, Klingbiel, J.)

Criminal Law . . . *juries and newspapers*

▪ The Supreme Court of Illinois, splitting four-to-three, has set aside a 1939 rape conviction and granted a new trial on the ground that the defendant was denied his constitutional right to an impartial and unprejudiced jury because the jury read, during the course of the trial, inflammatory newspaper stories concerning the defendant.

The defendant was tried and convicted in 1939 for a rape committed in 1938. On the evening before the last day of the trial, two newspapers ran articles, emanating from the assistant prosecutor in charge of the case, that the defendant had confessed to two murders for which he would be tried, that he had boasted of attacks on more than fifty women, that he was described by the police as a "vicious degenerate", and that he had been arrested while trying to attack a young woman. The headlines read: STATE WILL ASK CHAIR FOR YOUNG SLAYING SUSPECT and SLAYING CONFESSION READ IN TRIAL.

Upon being questioned the morning following publication, each juror conceded he had read one or both of the articles. But each also said he could and would ignore what he had read and not allow himself to be influenced. The trial judge subsequently instructed the jury to disregard the articles. Motion for a mistrial was denied.

Reviewing the case under Illinois's post-conviction hearing act, the Court held that the trial judge should not have considered as conclusive the jurors' statements that they could ignore the articles. Whether the press reports had prejudicially influenced the jury must rest in sound judicial discretion, it remarked. "It would not be unnatural", the Court stated, "for any law abiding citizen reading those articles to be incensed and incited with a desire to see that person severely punished. And it would be a violent assumption to say that twelve ordinary people, so incensed, could completely ignore their emotions and try the defendant without any conscious or unconscious prejudice."

One judge dissented on the ground that the Court was announcing an inflexible rule that a mistrial should be granted whenever prejudicial newspaper stories appeared, and another disagreed on the ground that the defendant had failed to show adequate constitutional grounds for reversal. The third dissenter filed no opinion.

(*Illinois* v. *Hryciuk*, Sup. Ct. Ill., November 18, 1954, rehearing denied March 22, 1955, Maxwell, J., 125 N.E. 2d 61.)

▪ Judge Henry N. Graven, of the United States District Court for the District of Iowa, is one judge who believes in giving credit to the newspapers when he thinks that credit is due. After sentencing four men and fining a corporation and a bank for violation of FHA loan laws, the judge complimented newspapers for coverage of the trial and also lauded the attorneys for refraining from issuing public statements or granting interviews while the case was pending.

The judge said that he did not know the names of the reporters who covered the trial and added: "I wish to state that it is clear that whoever did report this trial did so objectively, carefully and accurately and that there is no claim on the part of any of the defendants that the defendants' constitutional right to a fair trial was in any way infringed upon by the press."

The judge noted that when the courts have felt that the press has infringed on the right to a fair trial, they have said so. "I think it is only fair to the press that when they have not interfered with that right it should be made known."

(*Des Moines Sunday Register*, April 10, 1955.)

Criminal Law . . . *riot*

▪ Can a riot be committed by the inmates of a penitentiary? The Supreme Court of Pennsylvania has ruled yes, dismissing a contention that because the prisoners were incarcerated in one place by authority of the state the element of "assembly" was not present.

Eight convicts who participated in a four-day disturbance at Pennsylvania's Rockview Prison Farm in 1953 were convicted of the crime of riot, which the state's statute termed a misdemeanor, punishable by a possible three-year confinement and fine. But the statute did not define riot and the Court had to rely on the common-law definition, which speaks of an "assembly" of three or more persons.

The defendants contended that they were involuntarily in the penitentiary and that therefore the state had not proved the necessary element of unlawful assembly. But the Court held that even if the assembly were considered lawful in the beginning,

riot could be committed if groups of three or more joined and engaged in a "violent and turbulent manner" to execute an unlawful enterprise. "A riot may take place in a penitentiary as well as any other place", the Court said. "It is what occurs rather than where it occurs."

After the riot in question, the legislature enacted a statute making a riot in a penal or correctional institution a felony. The Court held that this did not indicate that before the statute there could be no riot in a penitentiary.

(*Pennsylvania* v. *Zwierzelewski,* Sup. Ct. Pa., January 14, 1955, Rhodes, J., 110 A. 2d 757.)

Criminal Law . . . *speed traps*

■ A radar speed meter is not a speed trap, according to the Appellate Department of the Superior Court of Alameda County, California.

California statutes provide that no evidence obtained from the operation of a speed trap is admissible. A speed trap is defined as a "particular section of a highway measured as to distance and with boundaries marked, designated or otherwise determined in order that the speed of a vehicle may be calculated by securing the time it takes said vehicle to travel such known distance".

A radar speed meter clocked a motorist at thirty-five miles per hour in a twenty-five mile-per-hour zone. Over his protest that the evidence of the officers operating the device was not admissible under the speed-trap statute, their testimony was allowed and he was convicted.

The Court, after examining the manner in which the radar detector operates, held that it wasn't a speed trap under the statute. The Court emphasized that no measured distances were used and that the device detected speed instantly whether the automobile was traveling a certain distance or not.

One judge dissented. He felt that the purpose of the legislation was to put policemen out patrolling and not manning speed traps. Therefore, he said, proper judicial construction dictated that the radar meter constituted a speed trap as much as the old-fashioned variety.

(*California* v. *Beamer,* App. Div., Super. Ct., Alameda Co., Calif., January 17, 1955, Hoyt, J., 279 P. 2d 205.)

Divorce . . . *migratory problems*

■ Threading its way through the complex field of migratory divorce law, the New York Supreme Court, Appellate Division, First Department, has held that a New York-domiciled wife may enjoin her New York-domiciled husband from obtaining a Mexican divorce, even though the Mexican decree would be a nullity. Two judges, dissenting, protested that the Court was changing the state's law that a suit for injunction under such circumstances should not be entertained because it is not necessary for the wife's protection.

The wife was awarded separate maintenance on June 15, 1954, by a New York court. The husband commenced a Mexican divorce suit on November 5, 1954, but he had continued to maintain a New York residence and was in Mexico only the day his action was started. He conceded he was anxious to acquire a new wife.

The Court felt that there were sound reasons of equity jurisprudence and enlightened public policy to support the granting of an injunction against prosecution of the husband's divorce suit in a foreign country. Worthless as the Mexican decree might be, the Court said, "there are many uses to which such a judgment may be put to cause a wife expense and litigation." Continued the Court:

> . . . It is of little help to tell the wife that the foreign decree is invalid and she has nothing to fear; that she may subsequently commence an action for a declaratory judgment. . . . Defendant promises to sap the security of plaintiff's household by holding out another household which will have no legal basis under our laws as an authentic one. . . . Society, being what it is, will accept the new wife and household at face value, and gradually relegate plaintiff and her children to an inferior and insecure social position.

The Court concluded that the former New York rule, under which injunctive relief was denied, had been swept away by the two Williams cases [*Williams* v. *North Carolina,* 317 U.S. 287 and 325 U.S. 226].

(*Rosenbaum* v. *Rosenbaum,* N.Y. S.C. App. Div., 1st Dept., February 23, 1955, Bastow, J., 138 N.Y.S. 2d 885.)

Equity . . . *jurisdiction*

■ Equity, benign as it may be, will not help a disenchanted puzzle contestant who claims he was deprived of a chance to win the contest. At least, that's the law of New York, according to the Supreme Court's Appellate Division, First Department.

The complaint alleged that the entrepreneurs of the contest violated the contest rules and regulations regarding the submission and handling of tie-breaking puzzles, which deprived the plaintiff of an opportunity to win. He sought a declaratory judgment nullifying the result of the contest, appointing a receiver and re-running the contest.

The Court characterized the contest as "one of those highly commercial enterprises [which falls] barely short of violation of the anti-lottery and anti-gambling statutes". But that didn't suggest, the Court said, that equity should intervene and under its supervision operate a contest or the re-running of a contest. "No worthwhile social or economic interest is to be protected", the Court remarked.

The disappointed contestant has a remedy at law for breach of contract, the Court declared, and the fact that his damages may be of a "virtually nominal character" would not require or suggest the intervention of equity.

(*Presser* v. *Sutton et al.,* N.Y. S.C. App. Div., 1st Dept., February 15, 1955, *per curiam,* 137 N.Y.S. 2d 384.)

Evidence . . .
"dead man's statute"

▪ In an action against a putative father's estate to enforce his oral promise to support his child, testimony of the unwed mother is admissible, but testimony of the child's maternal grandmother, to whom the promise of support was made, is not. This is the decision of the New York Court of Appeals in a case construing that state's "dead man" evidence statute.

The alleged oral contract was that the father would pay the grandmother $60 a month and other necessary expenses to bring up the child to the age of 21. The contract had been fulfilled for about four years at the time the father died. In an action for an anticipatory lump-sum settlement of the agreement, both the mother and grandmother were permitted to testify about the father's promise. It was contended that neither were competent witnesses because they had an "interest" in the outcome and were thus rendered incompetent to testify against the estate under the "dead man's statute".

But the Court ruled that, although the effect of the agreement would be to relieve the mother of her burden of supporting the child, this would not constitute an "interest in the direct legal operation of the judgment" as contemplated by the statute. The grandmother was incompetent to testify, the Court continued, because she was the person with whom the father contracted and through whom the child, the real beneficiary, derived her interest. On this point, the Court reversed.

The Court rejected the estate's contention that the contract was void under the statute of frauds because it could not be performed in one year. The Court said this point was inapplicable because the child might die within a year and that this event would attain the object of the contract insofar as it was possible of attainment.

Two judges dissented. They thought that the testimony of the grandmother was competent, but that in any event the case should not have been reversed because there was plenty of competent evidence to support the jury's verdict against the estate.

(*Duncan* v. *Clarke et al.*, N.Y. C.A., March 10, 1955, Van Voorhis, J., 125 N.E. 2d 569.)

Labor Law . . .
state jurisdiction

▪ Dealing with one phase of the expanding problem of what fields of labor law are the exclusive jurisdiction of the National Labor Relations Board, a New York court has held that an expelled union member has an action in New York courts against his former union for reinstatement of membership and damages.

The plaintiff had been a member of the National Maritime Union, whose constitution provides for automatic suspension of any member convicted of a narcotic offense "during such period of membership". He was expelled from the union under this provision, although his narcotic conviction was in 1939 and he did not become a member of the union until 1944.

He commenced a civil suit in New York, but the trial court dismissed his complaint for lack of jurisdiction on the ground that his exclusive remedy was for an unfair labor practice under the Taft-Hartley Act and through the NLRB. Since New York law is settled that a wrongfully-expelled union member has an action for restoration, the precise question was whether Taft-Hartley's unfair labor practice provisions excluded the state court from its traditional jurisdiction.

The Supreme Court's Appellate Division, First Department, examining Board cases, found that in similar situations the Board had not assumed the power to restore union membership, but had granted only job reinstatement and damages. Therefore, the Court concluded, since the NLRB did not assume the same jurisdiction as the state courts, the latter were not ousted from the field.

(*Real* v. *Curran et al.*, N.Y. S.C. App. Div., 1st Dept., March 15, 1955, Breitel, J., 138 N.Y.S. 2d 809.)

Military Law . . .
desertion and defection

▪ The United States Court of Military Appeals has affirmed the conviction of a soldier who defected temporarily to the East Zone of Germany and cavorted with the State Security Service of East Germany (SSD). The soldier was convicted for two desertions and for an offense of bringing discredit on the service under Article 134 of the Uniform Code of Military Justice [50 U.S.C.A. §728].

The accused spent two sojourns in East Germany. Between the two, on his return to West Berlin, he had been arrested by the Army, but had escaped. While in East Germany, he had a grand time. The SSD provided him with money, clothes and living quarters for himself and his mistress. He traveled around on SSD passes. When the SSD suggested that he might do something to earn his keep, he told them he was a journalist, and they asked him to write "some opinion of his on communism". There was a Maxim Gorki book handy, so he copied an article directly from it. The SSD thought this was great stuff. But when they wanted him to talk to American soldiers they would bring to him, he decided it was time to go west.

Affirming the conviction, the Court ruled that the SSD was an organization which advocated the violent overthrow of the United States Government. It rejected the accused's contention that it was just a group of "conquered, subjugated and occupied people". Adopting the evaluation of experts at the trial, the Court found it to be the link between Russia and East Germany.

Neither was the Court impressed with the soldier's argument that the specification was defective in not charging that he had a specific intent to overthrow the Government by means of force and violence. The Court replied that it was enough under Article 134 to charge affiliation with an organization devoted to that

aim, and it ruled that the accused's dealings with the SSD amounted to an affiliation.

(*U.S.* v. *Blevens,* U.S. Ct. Mil. App., February 18, 1955, Quinn, C. J., 5 U.S.C.M.A. 480.)

Negligence . . . *guest statute*

■ The Supreme Court of Kansas has met one of the perplexing questions that arise under guest statutes: when is a person a "guest" under the statute?

Two couples had gone on several hunting trips together. Their custom was that the couple not furnishing the car paid gasoline and food expenses en route. While on a hunting trip under this arrangement, the defendant drove off the road and the husband and wife riding with him sued for their personal injuries.

Under Kansas' guest statute no action lies with the guest unless he can prove "gross and wanton negligence". The plaintiffs did not allege gross and wanton negligence and they conceded that they had proved only ordinary negligence. But, no matter, they contended, they were not guests because they paid for the defendant's gasoline and meals.

The Court disagreed. It affirmed the defendant's demurrer which had taken the case away from the jury. With one judge dissenting, the Court held that plaintiffs were guests and that the payment of certain traveling expenses, in view of the long-standing custom of the couples, was nothing more than the exchange of social amenities; it didn't transform the plaintiffs' status into that of passengers "for pay". The Court observed: "To hold otherwise would compel every host to dilute his hospitality and season it with the flavor of a bargain."

(*Bedenbender* v. *Walls* [two cases], Sup. Ct. Kan., March 5, 1955, Price, J., 280 P. 2d 630.)

Torts . . . *right of privacy*

■ Ex-prizefighter Al Ettore had his big night on September 22, 1936, in Philadelphia. That night he fought Joe Louis, but, unfortunately, Louis knocked him out in the fifth round.

Motion pictures of the fight, however, qualified for showing in 1949 and 1950 on a television program entitled "Greatest Fights of the Century". No one asked Ettore for permission to show the films.

This was an invasion of his right of privacy, Ettore complained to the United States District Court for the Eastern District of Pennsylvania. And what's more, he added, the TV people cut out the third round, in which, he claimed, he made a splendid showing. This was particularly galling, he lamented, because he had told his friends to be alert for the third round, and after the telecast his friends chided him acidly.

The Court dismissed the complaint. It conceded that an action for invasion of the right of privacy existed, but that the instant case fell within one of the well-defined limitations. By performing in a public sporting event, the Court explained, Ettore had waived his right of privacy.

The Court also determined that Ettore had no action under the New York civil rights law giving the right to sue to any person "whose name, portrait, or picture is used . . . for advertising purposes or for the purposes of trade without . . . written consent". Television, like other media of communication, the Court stated, may have both a trade and informative or news aspect, and it was in the latter category in which Ettore's picture was used.

The Court also rejected Ettore's claim of humiliation caused by editing out the third round. To hold otherwise, it noted, would place television in "such a precarious position that it would be impossible for them to determine when, what, and how much to televise". Likewise, the Court turned down an argument that Ettore had a property right in the film.

(*Ettore* v. *Philco Television Broadcasting Corporation et al.,* U.S. D.C. E.D. Pa., November 23, 1954, Watson, J., 126 F. Supp. 143.)

Workmen's Compensation . . . *death by lightning*

■ The Supreme Court of South Dakota has held that the death by lightning of a highway-construction worker was compensable because his work placed him in an exposed position to the storm.

The worker was standing on a newly-constructed ten-foot grade of moist earth at the time he was struck by lightning and killed. It was conceded that death occurred in the course of employment, but contested that it arose out of employment. The state's industrial commission had ruled that the case was not compensable because the employee was placed in a no more hazardous position by reason of his employment than many of the general public find themselves during a storm.

But the Court, emphasizing the remedial and liberal-interpretation aspects of workmen's compensation legislation, said the critical inquiry was "whether the employment, viewed in any of its aspects, contributed to the injury of the deceased". Viewing the case from that position, the Court found that the employee was placed in a position of peril because of the fact that he was, in the course of his employment, standing in an exposed position on wet ground. The Court declared that "neither the words nor the spirit of the act indicate an intention to deny compensation because the conditions contributed by the employment are but typical of those natural conditions which may expose the general public to the hazard of lightning".

(*Bergren* v. *S. E. Gustafson Construction Company,* Sup. Ct. S.D., February 4, 1955, Smith, J., 68 N.W. 2d 477.)

What's Happened Since . . .

■ On March 28, 1955, the Supreme Court of the United States:

REVERSED [7-to-1, with opinion by MR. CHIEF JUSTICE WARREN] the ruling of the Court of Appeals for the Third Circuit in *Commissioner* v. *Glenshaw Glass Company,* 211 F. 2d

928 (digested in 40 A.B.A.J. 521; June, 1954), that proceeds received either in satisfaction of a judgment for punitive or treble damages under the Clayton Act [15 U.S.C.A. §15], or in an out-of-court settlement of such a claim, do not constitute income for taxation purposes. "We would do violence to the plain meaning of the statute and restrict a clear legislative attempt to bring the taxing power to bear upon all receipts constitutionally taxable were we to say that the payments in question here are not gross income", the Supreme Court said.

DENIED CERTIORARI in *Warner Bros. Pictures, Inc.* v. *Columbia Broadcasting System, Inc.*, 216 F. 2d 945 (digested in 41 A.B.A.J. 72; January, 1955), leaving in effect the decision of the Court of Appeals for the Ninth Circuit that a copyright does not protect the names of characters used in the copyrighted material and that consequently the assignment of the copyright does not vest in the assignee exclusive right to use the characters in other stories.

▪ On April 4, 1955, the Supreme Court of the United States:

REVERSED [6-to-0, with opinion by MR. JUSTICE REED] the ruling of the United States District Court for the District of Columbia in *U.S.* v. *Bramblett*, 120 F. Supp. 857 (digested in 40 A.B.A.J. 783; September, 1954), that a Congressman who falsely and fraudulently represented to the House Disbursing Office that a certain person was entitled to compensation as his clerk committed no crime under 18 U.S.C.A. §1001 because that section was limited to falsifications made to the executive department. The Supreme Court held that it is likewise a crime under the section to certify falsely to the legislative and judicial departments.

DISMISSED the appeal from the Supreme Court of Illinois of that Court's decision in *American Civil Liberties Union* v. *City of Chicago*, 121 N.E. 2d 585 (digested in 40 A.B.A.J. 1087; December, 1954), that a Chicago city ordinance authorizing the Commissioner of Police to ban the showing of any motion picture found to be "immoral or obscene" does not violate the First and Fourteenth Amendments. The state supreme court, after finding the ordinance constitutionally unobjectionable, had remanded the case to the lower court for a finding as to whether the picture involved was obscene. The Supreme Court therefore dismissed for want of a final judgment.

▪ On April 4, 1955, the Court of Appeals for the Second Circuit AFFIRMED the decision of the United States District Court for the Southern District of New York in *In re Ullman* [*sub nom. U.S.* v. *Ullman*], 128 F. Supp. 617 (digested in 41 A.B.A.J. 456, May, 1955), that the new federal immunity statute [18 U.S.C.A. §3486] does not contravene the Fifth Amendment and that the immunity granted under it is coextensive with the privilege taken. But the Court was far from happy about having to affirm.

Writing for the Court, Judge Frank said that he was "not prepared to say" that the defendant's contentions lacked all merit, but that the argument should be "addressed not to our ears but to eighteen others in Washington, D.C." Chief Judge Clark, concurring, did so "regretfully [because] the steady and now precipitate erosion of the Fifth Amendment seems to me to have gone far beyond anything within the conception of those justices of the Supreme Court who by the narrowest of margins first gave support to the trend in the 1890s" when the Supreme Court decided *Brown* v. *Walker*, 161 U.S. 591, holding that the Fifth Amendment privilege against self-incrimination relates solely to testimony which might lead to prosecution for a crime. Also concurring, Judge Galston stated that if the matter were one of first impression he "could easily reach the conclusion that the immunity statute in question is in effect a circuitous attempt to circumvent the Constitution by a short-cut legislative statute amending the Fifth Amendment".

Second Annual Summer Program for California Lawyers

▪ The Second Annual Summer Program for California Lawyers is scheduled for the first two weeks in August at the University of California School of Law in Berkeley with top California legal experts on hand to help practicing lawyers keep up with new developments and techniques in their field. The two-week program is presented by the School of Law at Berkeley through facilities of University of California Extension.

Four courses will be offered during the period August 1 to 12. These are titled "Evidence for the General Practitioner"; "Organizing and Advising Corporate Enterprises"; "California Administrative Law"; and "Income Tax Planning'.

Lawyers interested in obtaining further information about the Second Annual Summer Program should communicate with Adrian A. Kragen or Edward L. Barrett, Jr., Faculty Representatives for Continuing Legal Education, School of Law, University of California, Berkeley, or write to Department of Continuing Education of the Bar, University Extension, 2441 Bancroft Way, Berkeley 4, California.

(Continued from page 500)

should be established for this purpose within the Department of Justice. The task force felt that this proposal made indispensable the complete separation of legal management and litigation functions within the Department, since the career service would recruit attorneys for the Department of Justice as well as for all other agencies and departments of the executive branch. The Commission agreed that the administration of the career legal service should be conferred upon an office of legal services and procedure within the legal management division of the Department of Justice.

The method of operation of the career legal service is too extensive to be treated in this article. It is contemplated, however, that a register of qualified applicants will be maintained by the office of legal services and procedure and that most positions will be filled from that register. Suitable provision is made for bringing experienced attorneys into government service, especially in policy-making positions.

Related to the career legal service is a recommendation of the Commission that attorneys be generally excepted from the Classification Act, under which positions are based upon civil service job descriptions, and that an attorney classification act be established with provision for a senior attorney category, with salaries ranging to $17,500, for which a limited number of highly qualified attorneys would be eligible.

The task force found that tenure was not a significant factor in the retention of able attorneys in government service. It felt that the Lloyd-LaFollette Act, which gives limited tenure to most government employees, should not be extended generally to attorneys. The Commission, however, concluded that the Lloyd-LaFollette Act should apply to attorneys in the career legal service and that the probationary period for such attorneys should be set at three years. It also recommended that dismissals be based upon the relatively simple provisions of that act which call for a statement of charges in writing, a reasonable opportunity to reply and consideration of the reply by the agency.

While the task force concluded that preferences might properly be accorded veterans in the employment of attorneys, it found that the Veterans' Preference Act sometimes prevents the removal of relatively incompetent attorneys in periods of reduction of personnel. The Commission recommended that in matters of separation and reduction in force, a veteran's right to appeal should be to the office of legal services and procedure, should be limited to the first five years after entry into the government service, and should not in any case be exercised by a veteran occupying an attorney position in the higher grade levels.

The task force found that the performance of legal duties cannot be adequately measured by the standards utilized in evaluating the work of clerical employees and that the Performance Rating Act was almost completely useless as applied to attorneys. The Commission agreed with the task force and recommended that in place of the Performance Rating Act a system be established under which the supervisor reports from time to time only on those attorney employees who have potential capacity for higher responsibilities, who are deserving of merit awards, who should be reassigned to other work, who are undeserving of periodic pay increases, or who should be dismissed because of unsatisfactory service.

The appropriateness of outside legal practice by government attorneys was considered by the task force. While the problem was found to be less serious than in former years, the task force proposed, and the Commission approved, the principle that attorneys occupying full-time positions in the executive branch should be prohibited from engaging in outside legal practice except upon express permission to handle family legal matters which do not interfere with the performance of official duties. The Commission further recommended that such attorneys be prohibited from engaging in business activities which interfere with their governmental responsibilities.

Military Attorneys

The Commission agreed with the task force that each of the military establishments should have a professional legal staff under the direction of a judge advocate general. Specifically, it recommended that a judge advocate general's corps be established in the Navy Department. It further recommended that the judge advocates general develop a program to recruit lawyers of ability upon graduation from law school, or within five years thereafter, for career military legal service, and that the respective corps be established on a basis of professional independence, sound promotion and adequate compensation.

The task force found that considerable expense has been incurred by the military departments in sending officers to law school. In many instances such officers do not perform exclusively legal functions upon completion of their education. The task force felt that emphasis should be placed on the recruitment of lawyers for the military departments rather than on the training of military officers in law. The Commission concluded that programs to provide an undergraduate legal education for officers of the Army, Navy and Air Force should be discontinued. With respect to the Marine Corps, the Commission felt that, should the need exist, Marine Corps officers not above the rank of first lieutenant might be given such training, provided that they remained in service for five years after completion of the training and served exclusively as officer-attorneys in the Marine Corps.

The task force proposed that instruction in procurement, contract readjustment and other commercial law fields should be discontinued in military schools, and it suggested the possibility of the creation of a single school of military justice to serve the needs of all military departments for specialized legal training in military

justice and affairs. The Commission recommended the discontinuance of separate schools of military justice, the establishment of a joint school for all four services, and a limitation of the curriculum for the joint school to subjects in military justice and military affairs. It further recommended that non-attorney senior ranking officers of all services whose responsibilities require a knowledge of the Uniform Code of Military Justice be required to attend the school.

II. Representation Before Agencies

Every person whose rights may be affected by action of an agency of the Government should be entitled to appear before the agency, in person or by counsel, in the defense of those rights. Correlatively, the executive branch of the Government has a responsibility to assure that representation before agencies is properly conducted.

The Right to Representation

The task force found that the right to be accompanied by counsel in appearances before agencies of the Federal Government has not always been respected. It submitted that every person should be given the statutory right to appear by or with an attorney-at-law or other qualified representative in any formal or informal proceeding before an administrative agency. The Commission recommended that every person required or entitled to participate in any hearing before an administrative agency should have a statutory right to appear by or with an attorney-at-law or other qualified representative, except as to classification of registrants by local Selective Service Boards and the granting of voluntary benefits by the government.

The Privilege of Representing Others

The Commission and the task force were in accord that no person should be permitted to represent any public or private person, party or organization, including the United States or any administrative agency thereof, before any agency of the executive branch unless he is qualified to do so as to character and competence.

The Commission recommended specifically that in appearances before agencies only attorneys-at-law be permitted to engage in the practice of law. The discussion by the Commission of this proposal, largely adapted from the task force report, is so basic to the role of the attorney in society as to merit its quotation at length:

> The several States confer the privilege to practice law, with its attendant responsibilities, solely upon licensed members of the legal profession. The States have recognized and approved control of the legal profession by the judiciary.
>
> Lawyers are officers of the courts. This means generally that (1) they have been trained in the law, (2) they have been examined as to competence and character by public authority, (3) they have taken an oath to uphold the Constitution and the laws of the States and Nation, (4) they have been duly admitted to practice by a court, and (5) for the rest of their professional lives, they are subject to disciplinary controls of the courts, including the power to disbar.
>
> It is as important to the government as it is to the public that the practice of law before agencies be restricted to members of the legal profession. Surveillance of attorneys' actions rests with the legal profession and the courts.
>
> Many transactions between the Government and the public do not involve the practice of law. In such transactions the Government may well accord to nonlawyers the privilege of representing others. Since the latter are not subject to the disciplinary control of the judiciary, agencies must find alternative means of regulating them.
>
> A difficult problem for many agencies is the allocation of responsibility between the legal profession and other professional and nonprofessional groups in matters of representation. Nonlawyers may not engage in the practice of law. But what constitutes "the practice of law"?
>
> It is impossible to give a simple definition. Our task force has done no more than to offer suggestions to agencies to help them in defining the areas in which nonlawyers may be permitted to represent others. It has noted the many religious, fraternal, and other benevolent organizations which provide competent assistance to people who could not afford to pay for legal services. Our task force has not proposed that their beneficial activities be restricted.
>
> In the final analysis, what constitutes the practice of law is a judicial question. Authorization which an agency may give to an individual to represent others should not be construed as affecting the function of the courts in controlling the practice of law. The definitions which the courts have developed constitute the most authoritative guidance to agencies. In fixing limitations on lay representation they should consider whether the proceeding requires advocacy, knowledge of principles of law, preparation of legal documents, conduct of adversary proceedings, or other criteria used by the courts.[14]

General Standards of Conduct

The task force gave special consideration to the question of the enactment of minimum standards of conduct applicable to all persons who appear in a representative capacity before agencies of the Government. It found that while many agencies have imposed such standards by rule, the majority of agencies have not taken steps to protect the public in reliable and competent representation. It proposed that general minimum standards of conduct should be enacted into law to prohibit the representation of conflicting interests, the solicitation of clients, improper advertising, private communications with officers and employees of agencies on the merits of pending cases and attempts to influence agency action by threats, false accusations, duress, promises, gifts or other forms of undue or improper pressure.

The Commission agreed with the task force that minimum standards of conduct should be established by statute to govern all persons permitted to represent others before agencies and with the enumeration of the standards proposed by the task force. It further agreed that such standards, when enacted into law, should be applicable to those who represent the United States and agencies thereof as well as to those who represent other parties before agencies.

14. *Com. Rep.*, pages 33-35.

The Discipline of Lawyers

Eleven agencies of the executive branch have enrolled Bars. Special requirements for admission of attorneys are imposed by the Patent Office and the Treasury Department. The task force and the Commission agreed that these special requirements are not consistent with the status of the attorney as an officer of the court, and they joined in a proposal for remedial legislation. The Commission recommended that an attorney-at-law should be entitled to appear for and represent other persons, parties or organizations, including the United States, before any agency upon filing a statement with the agency that he is a member in good standing of the Bar, according to the law of any state, territory, commonwealth, or possession of the United States or of the District of Columbia, and that he is not under suspension by any federal court.

The theory that any attorney-at-law in good standing should be permitted to practice before an agency without any further qualification is predicated upon the effective policing of attorneys by the legal profession. If the character investigations of attorneys by the Treasury Department are to be eliminated, for example, the Treasury Department is entitled to rely upon the profession to discipline any dishonest members in its ranks. Discipline of attorneys practicing in the state of admission is usually effective. But a special problem is presented by the attorney who moves to Washington, D. C., for the purpose of engaging in administrative law practice before the Treasury Department and other agencies. Such attorneys retain only formal ties with the jurisdiction in which they were admitted to the practice of law. If they do not join the Bar of the District of Columbia there may be no effective disciplinary control over them.

To meet this situation, the task force proposed that authority to discipline attorneys engaged primarily in administrative practice before federal agencies be vested in the United States district court of the judicial district in which they principally engage in the practice of law. To implement this proposal the task force proposed the creation of a federal grievance committee, consisting of five attorneys appointed by the Chief Judge of the United States Court of Appeals for the District of Columbia Circuit, to hear complaints against attorneys engaged in administrative law practice, whether in the representation of private clients or the Government itself. The grievance committee would have authority to hear complaints and to issue reprimands or initiate disciplinary proceedings against the attorney in the courts of his own state or in the appropriate United States district court. Notice of every such proceeding would be given to the jurisdiction in which the attorney is licensed to practice law.

The task force felt that it was desirable for agencies to have limited direct disciplinary authority over attorneys engaged in practice before them. It suggested that each agency be empowered to suspend an attorney from practice before it for a period of not more than one year for misconduct of the attorney before the agency.

The Commission agreed completely with the task force on these proposals. It recommended that an attorney-at-law who has the privilege of representation before any agency of the United States be subject to disciplinary control (1) by a federal grievance committee through proceedings in a United States district court, and (2) by each agency, with authority to suspend him from practice before that agency for not more than one year.

The Discipline of Non-lawyers

The task force and the Commission both recognized the fact that the privilege of representation before agencies of the Government cannot be confined to the legal profession. Of this, the Commission said:

> Non-lawyer representatives perform valuable services in supplementing the primary responsibility of the bar. So long as their activities do not constitute the practice of law there is no necessity to discourage such representation. The test should be whether it is in the public interest and in the interest of the parties, and in accordance with law. The agency should make such investigation or examination as it deems necessary to determine that each applicant possesses the necessary competence and understanding of ethical responsibilities and is of good moral character and repute.[15]

The task force surveyed the areas in which non-lawyers presently engage in representation before administrative agencies. It found that many situations are gradually being corrected, particularly in the discontinuance by the Patent Office of the special category of non-lawyers who have held themselves out, in the past, as "patent attorneys". And the task force found that many organizations such as the American Legion and the Veterans of Foreign Wars perform services for veterans that are highly desirable. But the task force did find a serious problem existing in the matter of the collection of the public revenues, where public accountants and certified public accountants as well as lawyers are engaged in assisting taxpayers with their tax problems. Of this, the task force stated:

> In the tax field, the task force believes that existing limitations upon public accountants to support tax returns prepared by them should be adjusted so as to permit public accountants as well as certified public accountants and attorneys to defend such returns in informal negotiations with the Treasury Department through the group supervisor level. Certified public accountants should be permitted to defend tax returns prepared by them through the Appellate Division of the Internal Revenue Service. Neither public accountants nor certified public accountants should, pursuant to such authorization, engage in the practice of law. Only attorneys should, in principle, represent taxpayers in the Tax Court.[16]

The Commission agreed with the task force on the proper scope of functions of public accountants and certified public accountants in han-

15. *Com Rep.*, page 41.
16. *Report of the Task Force on Legal Services and Procedure*, March, 1955, (henceforth cited as *Task Force Rep.*) page 318.

dling tax matters before the Treasury Department. The Commission said:

> Public accountants should be permitted, without examination, to deal with tax returns prepared by them through the group supervisor level of the Internal Revenue Service. Certified public accountants should be permitted, without examination, to handle tax returns prepared by them through the Appellate Division of the Internal Revenue Service.[17]

The Commission took note of the fact that through historical circumstances, some persons who are not lawyers are permitted to practice before the Tax Court. With respect to this matter, the Commission observed:

> This Court, which is essentially a judicial body, like the district courts and Court of Claims, has been gradually rectifying this situation since 1943 by requiring accountants to pass an examination as a qualification to practice before the Court. Since 1943, 254 nonlawyers have taken the examination. Only 48 have passed. The nonlawyer practitioners before the Tax Court are rapidly diminishing in number.[18]

Subject to these observations, the Commission concluded that persons should be permitted to appear for and represent other persons, parties, or organizations before an agency, including the United States or any agency thereof, whenever the agency provides therefor by general rule, and that such persons should be subject to reasonable disciplinary control by the agency which authorizes them to appear before it in such representative capacity.

III. Legal Procedure

The first really important quasi-independent commission of the Federal Government, the Interstate Commerce Commission, was established in 1887. In the sixty-year period which followed, culminating in the creation of the Atomic Energy Commission in 1946, the authority of regulatory agencies was extended over a very broad range of economic life in America, embracing such matters as trade regulation, banking, communications, aeronautics, radio and television, motor transportation, inland waterways, securities, labor relations and many other subjects. Regulation is broadly exercised today at both federal and state levels of government. Nor does that trend show signs of diminishing.

This expansion of the powers of regulatory agencies did not take place unnoticed by leaders of the Bar. At the 1916 Annual Meeting, the then President of the Association, Elihu Root, referred to it in these words:

> There is one special field of law development which has manifestly become inevitable. We are entering upon the creation of a body of administrative law quite different in its machinery, its remedies, and its necessary safeguards from the old methods of regulation by specific statutes enforced by the courts. . . . Yet the powers that are committed to these regulating agencies, and which they must have to do their work, carry with them great and dangerous opportunities of oppression and wrong. If we are to continue a government of limited powers these agencies of regulation must themselves be regulated. The limits of their power over the citizen must be fixed and determined. The rights of the citizen against them must be made plain. A system of administrative law must be developed, and that with us is still in its infancy, crude and imperfect.[19]

Again in 1924, in the memorable address which he delivered at Westminster Hall on the occasion of the London meeting of the American Bar Association, Charles Evans Hughes, who was then the President of the Association, remarked:

> The spirit of the Common Law is opposed to those insidious encroachments upon liberty which take the form of an uncontrolled administrative authority—the modern guise of an ancient tyranny, not the more welcome to intelligent free men because it may bear the label of democracy. It is doubtless impossible to cope with the evils incident to the complexities of our modern life, and to check the multiform assaults of organized cupidity, by the means which were adapted to the simpler practices of an earlier day, but we have an instinctive feeling that there is no panacea for modern ills in bureaucracy. There is still the need to recognize the ancient right—and it is the most precious right of democracy—the right to be governed by law and not by officials—the right to reasonable, definite and proclaimed standards which the citizen can invoke against both malevolence and caprice.[20]

It was not until 1933 that the American Bar Association undertook a real study of the problem and began genuine efforts to solve it. In May of that year there was established within the Association a Special Committee on the Practice of Administrative Law. The committee promptly undertook a study of the administrative process and arrived at the conclusion that only by creating an administrative court with appropriate branches and divisions could the judicial functions of federal agencies be separated from their legislative and executive functions. The 1936 report of the committee contained an extensive argument in favor of the creation of a federal administrative court, and the Association approved that recommendation in principle. The work of this committee in the ensuing twenty years was rewarded with the enactment of the first comprehensive statute in federal administrative law, the Administrative Procedure Act of 1946. The committee thereafter achieved permanent status as the Section of Administrative Law.

With this experience as a background, the task force undertook a general re-examination of the procedures applicable to administrative agencies of the Federal Government. It considered such broad problems as the duplication and overlapping of jurisdiction; legislative delegations of authority; due process, efficiency, and economy in administrative procedure; the transfer of judicial functions of administrative agencies to the courts; and the special problem of the status of hearing commissioners.

Overlapping Jurisdiction of Agencies

The task force began with a prelimi-

17. *Com. Rep.*, page 43.
18. *Com. Rep.*, page 44.
19. 2 A.B.A.J. 749-50 (1916).
20. AMERICAN BAR ASSOCIATION VISIT TO ENGLAND, SCOTLAND AND IRELAND 1924, page 91 (1926).

nary study of the vast problem of dual grants of regulatory authority and the conflicts which have resulted among federal agencies, between federal and state agencies and between agencies and the courts. In the time available, it was impossible for the task force to do more than to demonstrate the seriousness of the problem and to suggest general principles which might be applied to resolve such conflicts in specific areas of regulation.

Jurisdictional overlapping and duplication have resulted not only from the fact of enlarged regulatory functions of government but also, and perhaps primarily, from the circumstance that agencies have been established in response to demand for controls in a certain area or with respect to a certain activity and not according to any general plan for balanced governmental regulation. As to this, the Commission observed:

> This extension of the functions and powers of the executive branch has not taken place according to any preconceived plan. Each agency and department has been created or enlarged as the needs of the moment have seemed to demand, frequently without sufficient regard for the jurisdiction and power of other agencies and departments. It has led to overlapping jurisdiction and conflicts between the Federal agencies and their counterparts in State governments, between one Federal agency and another, and between Federal agencies and the courts.[21]

The task force found that the broad construction which has been given to the commerce clause by the courts in recent years has enabled the Federal Government to take jurisdiction over a range of matters which formerly were considered to be within the province of the states.[22] But the task force concluded that the scope of authority permissible under the Constitution should not be the measure of the authority conferred by Congress upon federal agencies, and it set out a number of advantages in state control which it felt should receive consideration whenever a proposal was presented that the Federal Government assert the maximum of its regulatory powers under the Constitution.

Many specific areas of conflict between state and federal agencies and among federal agencies themselves were reported upon by the task force. Methods heretofore utilized to reduce conflicts were analyzed. On the basis of this study and analysis, the Commission recommended that by appropriate congressional action, duplicating and overlapping jurisdiction should be reduced to a minimum and eliminated when possible (a) by the relinquishment, subject to constitutional responsibilities, of jurisdiction by federal agencies to state agencies which meet reasonable standards of regulation, and (b) by restricting the authority of federal agencies over the same subject to a single agency, or by combining agencies into commissions with sections to perform specialized regulatory functions.

(To be continued in the July issue of the Journal).

21. *Com. Rep.*, page 47.

Make Your Hotel Reservation Now!

■ The Seventy-Eighth Annual Meeting of the American Bar Association will be held in Philadelphia from August 22 to August 26, 1955. Further information with respect to the schedule of meetings appears in the February issue of the JOURNAL beginning at page 152 and in this issue at page 522.

Attention is called to the fact that many interesting and worthwhile events of the meeting will be arranged, as usual, to take place on Saturday and Sunday, August 19 and 20, preceding the opening sessions of the Assembly and the House of Delegates on Monday, August 22.

Requests for hotel reservations should be addressed to the Reservation Department, American Bar Association, 1155 East Sixtieth Street, Chicago, 37, Illinois, and should be accompanied by a payment of $10.00 registration for *each lawyer* for whom reservation is requested. *Be sure to indicate three choices of hotels* and give us your definite date of arrival as well as probable departure date. Sleeping accommodations are still available in the following hotels: Adelphia, Belgravia, Benjamin Franklin, Broadwood, Drake, Essex, John Bartram, Penn Sherwood, St. James, Sylvania, and Walnut Park Plaza.

More detailed announcement with respect to the making of hotel arrangements may be found in the January issue of the JOURNAL at page 11.

Tax Notes

▪ Prepared by Committee on Publications, Section of Taxation, John W. Ervin, Chairman; John S. Nolan, Vice Chairman.

Net Worth Method in Proving Tax Evasion

by Spurgeon Avakian

▪ With the tremendously increased resort during the past few years to the use of the net worth method in developing tax evasion cases, it was inevitable that many questions would arise which would require Supreme Court adjudication. In a group of four cases decided on December 6, 1954, the Court went a long way toward establishing the general principles which must underlie the application of basic rules of criminal law to net worth tax evasion cases. In the main opinion (*Holland* v. *United States,* 348 U.S. 121, 75 S. Ct. 127), the Court traces the development of the net worth method from the infrequent use made of it in racketeer cases in the 1920's and 1930's to the present day when "its horizons have been widened until now it is used in run-of-the-mine cases." The net worth method, says the Court, has evolved "from the final volley to the first shot in the Government's battle for revenue," and its use "is so fraught with danger for the innocent that the Courts must closely scrutinize its use".

The "net worth-expenditures" formula for determining income is as follows: Increase in net worth, plus non-deductible disbursements, minus non-taxable receipts, equals taxable net income.

Opening Net Worth . . . *A Troublesome Question*

The first and often the most difficult question is the determination of the taxpayer's "opening" net worth at the "starting point". Often the taxpayer contends that he had a substantial amount of cash in his safe deposit box or at his home at the starting point. In the *Holland* case, the defendants (husband and wife) claimed they had accumulated $113,000.00 in currency. In one of the other cases (*Friedberg* v. *United States,* 348 U.S. 142, S. Ct. 138), a cash hoard of over $60,000.00 was claimed. The Court recognizes that it may be just as difficult for the taxpayer to convince the jury of the existence of such a hoard as it is for the Government to refute the contention.

There is also the question whether the increase in net worth sprang from taxable income, rather than from non-taxable sources such as gifts, inheritances and loans.

The Supreme Court's solution of these problems is essentially one of expediency. The Government, having the burden of proof, must establish the opening net worth with reasonable certainty and must submit satisfactory proof that non-taxable sources are not responsible for the increase in net worth. If the taxpayer furnishes the investigators with relevant leads which are reasonably susceptible of being checked, the Government must track down such leads or must satisfactorily negate the taxpayer's claim in some other way. Failure to do so may warrant the trial judge in considering the claims of the taxpayer as true in determining whether the case is sufficient to go to the jury. Just how much investigation is required depends upon the facts of each particular case. Similarly, if the Government shows that the taxpayer had a source of income which could have produced the increase in net worth, it need not negate every possible source of non-taxable income, although it may not disregard explanations of the defendant which are "reasonably susceptible of being checked".

It has long been thought that the legal basis for use of the net worth method was Section 41 of the 1939 Code (Section 446 of the 1954 Code), which provides that income shall be determined in accordance with the method of accounting employed in the taxpayer's books, and authorizes the Commissioner to use some other method if the books and records do not fairly reflect the income or are not available. See, *e.g., United States* v. *Riganto,* 121 F. Supp. 158 (U.S. D.C., E.D.Va., 1954); *United States* v. *Williams,* 208 F. 2d 437 (3d Cir. 1953); *Remmer* v. *United States,* 205 F. 2d 277 (9th Cir., 1953), judgment vacated on other grounds, 347 U.S. 227, 74 S.Ct. 450.

The Court upsets this notion by declaring Section 41 inapplicable. "The net worth technique . . . is not a method of accounting. . . ." Rather, the Court views it as an evidentiary device which the Government is free to use without first discrediting the defendant's books by specific evidence showing that they are inaccurate or unreliable.

Another difficult question is whether willful intent to evade may be inferred solely from the existence of a net worth increase larger than the reported income would justify. The Court recognizes that willfulness "cannot be inferred from the mere understatement of income". It holds, however, that the Government need not prove that any particular items or categories of income were omitted from the returns. In the *Holland* case, the Government showed that the hotel business operated by the defendants increased in total volume but that nevertheless the defendants showed a profit of only about one fourth of the amount declared by the previous management. It also showed that the cash register tapes, upon which the books were based, had been destroyed by the defendants, and that the books did not reflect receipts which the defendants had withdrawn

from the cash register for personal expenses. All of this made up "a consistent pattern of under-reporting large amounts of income and of the failure on petitioners' part to include all of their income in their books and records". This was sufficient to support an inference of willfulness. Apparently, if there should be no evidence of this kind, and if the Government's proof should consist only of an unexplained increase in net worth (commonly referred to as a "pure" net worth case), the Court might well hold the evidence of willfulness insufficient to go to the jury.

An important portion of the *Holland* opinion deals with the instructions to be given to the jury. Inferences and assumptions are piled on top of each other in a net worth case. From the exhaustive investigation made to discover all assets and liabilities, the jury is asked to infer that the Government's net worth computations are correct. Then it is asked to infer that the increase in net worth resulted from taxable income rather than from non-taxable sources. Finally, if this produces greater income than has been reported, the jury is asked to infer that the omission was intentional. As the Court points out in the *Holland* opinion, "There is great danger that the jury may assume that once the Government has established the figures in its net worth computations, the crime of tax evasion automatically follows. The possibility of this increases where the jury, without guarding instructions, is allowed to take into the jury room the various charts summarizing the computations; bare figures have a way of acquiring an existence of their own, independent of the evidence which gave rise to them".

In view of the difficulties that arise "when circumstantial evidence as to guilt is the chief weapon of a method that is itself only an approximation", the trial court should give particularly clear instructions to the jury, including "a summary of the nature of the net worth method, the assumptions on which it rests, and the inferences available both for and against the accused".

Many a net worth case would be impossible to build without the cooperation of the taxpayer, and the Government will often "pick and choose from the taxpayer's statement, relying on the favorable portion and throwing aside that which does not bolster its position". The question then arises whether the admissions of the taxpayer may be used against him without independent corroboration. The roots of the corroboration rule are deeply laid in our legal history. It is justified by various factors, one of which, as the Court recognizes, is that "when a revenue agent confronts the taxpayer with an apparent deficiency, the latter may be more concerned with a quick settlement than an honest search for the truth". In *United States* v. *Calderon*, 348 U.S. 160, 75 S. Ct. 186, and *Smith* v. *United States*, 348 U.S. 147, 75 S. Ct. 194, both of which were also decided on December 6, 1954, the Government relied upon express and implied admissions of the taxpayers to the investigating agents in setting up the opening net worth. The Court held that the corroboration rule extended to any admission of the defendant relative to an essential element in the prosecution's case. The Court sided with the Government, however, in holding that the corroborating evidence need not go to the specific facts involved in the admission.

Richard Edwards

Spurgeon Avakian

Thus, the admissions of a defendant are admissible against him if the Government produces other evidence which tends to show a willful intent to evade tax.

These four decisions represent the Supreme Court's first words, but surely not its last ones, on the use of the net worth method. The application of guiding principles to specific fact situations will in all probability result in conflicting decisions in the lower courts, and will point up troublesome questions requiring further Supreme Court consideration. The Court itself, on January 10, 1955, remanded ten net worth cases to the various Courts of Appeals for reconsideration in the light of the *Holland* opinion. Many other net worth cases have been held in abeyance by the Courts of Appeals pending the *Holland* decision. The determination of these numerous appeals by the circuit courts will give some indication as to the extent to which further Supreme Court consideration will be necessary.

Practicing Lawyer's guide to the current LAW MAGAZINES

ATOMIC ENERGY AND PATENTS–An early well written analysis entitled "Will the Patent Provisions of the Atomic Energy Act of 1954 Promote Progress or Stifle Invention?" by William W. Beckett and Richard M. Merriman appears in *The George Washington Law Review* (December, 1954, Vol. 23–No. 2; pages 195–216). The Act enlarges the patentable class of non-military nuclear inventions. However, to encourage widespread participation, protect the public interest and prevent past government contractors from establishing unfair patent monopolies, Congress included provisions placing atomic patents in a special category apart from other patents. Section 152 of the Act makes government property of atomic inventions conceived under any "contract, sub-contract, arrangement or other relationship" with the Atomic Energy Commission, regardless of whether government funds are expended. Section 153 makes important atomic patents subject to compulsory licensing to the Commission and to persons engaged in Commission-approved atomic work. The primary criticism of Section 152 is that its scope is all-inclusive and poorly defined. The terms "arrangement or other relationship" with the Commission, if broadly construed, could include such persons as mere licensees of the Commission and even those persons requiring only a security clearance. Such an interpretation would result in the veritable socialization of the atomic industry. The writers also conclude that while compulsory patent licensing as provided in Section 153 may not transcend the Constitution, it will stifle invention, dilute the patent system, and constitute a dangerous precedent toward possible further compulsory licensing as other important industrial developments occur. The treatment of this question is especially timely since the Patent Provisions of the Act will probably soon be reviewed by Congress. (Address: The George Washington Law Review, 720 20th St., N. W., Washington 6, D. C.).

CONTRACTS: A complex situation arises when someone has failed to fulfill a contract to devise or bequeath. Professor Bertel M. Sparks, of the New York University School of Law, has written a scholarly article on the varied problems arising out of such situations. It is printed in the December, 1954, issue of the *Minnesota Law Review* (Vol. 39–No. 1, pages 1–47) under the title, "Enforcement of Contracts To Devise or Bequeath After the Death of the Promisor". The topics covered by Professor Sparks include the effect of contract on probate; the remedies, legal and equitable, available to the promisee; problems of priority and abatement; the effect of the contract on the rights of the surviving spouse; and the statutes of limitations and frauds. If this type of situation should arise in your practice, Professor Sparks' article will be an excellent starting point. It would be advisable, however, when attempting to circumvent the statute of frauds, to consider the possible effects of such state statutes as New York's Section 347 of the Civil Practice Act which tends to prevent proof of transactions between the surviving person and the deceased. (For copies, address Minnesota Law Review Foundation, University of Minnesota, Minneapolis, Minnesota. The price of a single copy is $1.75.)

GOVERNMENT: In the summer, 1954, issue of the *Cornell Law Quarterly* (Vol. 39–No. 4, pages 634-688) there is an excellent article by two attorneys with the Chicago office of the U. S. Atomic Energy Commission, James T. Ramey and John A. Erlewine. The title is, "Mistakes and Bailouts of Suppliers Under Government Contracts and Sub-contracts –A Study of Doctrine, Practice and Adhesions". It is a case history of a small businessman who had the misfortune of making a mistake in connection with a government contract. The authors' use of a case history adds concreteness to the subject, and yet allows them to discuss the general principles and considerations involved in what is an extremely important subject, the business relations of government and private industry. The article is humorous as well as serious, and is geared to a key-note sentence taken from a letter written by the small businessman: "We are sure that if you wish to do the right thing, you could find the procedure to do it, and if you don't want to do the right thing, you can easily fall back on legal gobble-de-gook." (For copies write to Cornell Law Quarterly, Cornell University, Ithaca, New York. The price is $1.25 for a single copy.)

LIFE INSURANCE–*"When Did Ulysses Die? or Mysterious Disappearances and Life Insurance"*: This article by Paul M. Roca appearing in the December issue of *The George Washington Law Review* (Vol. 23–No. 2; pages 172–193) accomplishes a most difficult *tour de force, i.e.,* it is at the same time a valuable contribution to current legal literature and a most readable article. The author discusses the problems involved when the beneficiary of a life insurance policy attempts to recover from the company following the mysterious disappearance of the insured. The cases are legion, asserts the author, but follow inconsistent theory or outmoded presumptions, or simply, being hard cases, yield bad law.

The presumptions in this area are fully treated by Mr. Roca and include the presumption of continuance of life, the presumption of death after seven years' unexplained absence and the presumption of death before seven years. The final problem here discussed is the time of death where these presumptions operate and its relation to the statute of limitations. The footnote documentation is comprehensive and arranged by states so that the article will be invaluable to the practicing lawyer whose legal search takes him into the area of life insurance and the relevant presumptions after a mysterious disappearance. Those of us who love to speak of Little Charlie Ross and Judge Crater will want to read this. (Address: The George Washington Law Review, 720 20th St., N. W., Washington 6, D. C., single copy price: $1.00).

PROCEDURE: Those of us who had the pleasure in our youth of taking the Medina cram course for the New York bar examinations know that his rarest talent is compressing into brief lectures and short clear outline, points that require days and pages for others. He can do the other, too; witness his printed opinion of over 400 pages in the Investment Bankers case. But make no mistake about it, the brief Medina is tops. The *Washington and Lee Law Review* (Vol. 11, No. 2, 1954, pages 141-153, Lexington, Virginia, price: $1.00) tells me that Harold R. Medina delivered before their fine law school that has graduated so many fine lawyers, including John W. Davis and Professor William Vance of Yale, the sixth annual John Randolph Tucker Lectures on April 23 and 24, 1954. The complete lectures will be published by the school in book form "at a later date" but the current *Washington and Lee Law Review,* published but twice a year, and consistently of high quality, contains a 12¼ page extract that, for beautiful writing, is impossible to excel. Nothing on this topic compares to it that I have seen except the address of Professor Delmar Karlen of the N.Y.U. Law School before the New York Temporary Commission on the Courts in September, 1954. (For this write Karlen at N.Y.U.) Judge Medina's piece is entitled "Procedural Reform and the Achievement of Justice" and in a remarkable way, the Judge sums up the problem:

> First in importance is the selection of judges and the making of provisions for their tenure, compensation and retirement. A corollary subject is the selection of jurors, providing them with suitable quarters and accommodations, and the formulation of methods designed to obtain general jury panels which represent a true cross section of the community. Next, the business management of the courts, by court integration, Judicial Councils and by the establishment of an administrative office or director or executive assistant to the Chief Justice. Fourth, judicial regulation of procedure by giving the rule-making power to the highest court of a state and taking it away from the legislature.

I have read and reread this little paragraph and each time I recall similar summaries of New York procedure and evidence of which Harold R. Medina was a master. No one, not even David Dudley Field ever knew so much about New York procedure.

As to the selection of judges, Judge Medina says:

> . . . Everyone knows that in vast areas of the country, and especially so in New York, the political leaders and not the electorate select the judges. It is not enough that the judges in fact be men of integrity; it is of equal importance that they be thought to be so. Chief Justice Vanderbilt often refers to a Gallup Poll which indicated that 28 per cent of those answering the inquiry stated that they did not believe that their local criminal judges were honest. As a matter of fact the fixing of traffic tickets has approached the point of being a national scandal.

The remedy lies in "removing judges as far as possible from partisan politics" and the use of the Missouri or a similar plan. Speaking of these, Judge Medina comments:

> It is interesting to know that all this stemmed from a resolution by the House of Delegates of the American Bar Association in 1937, recommending that vacancies be filled preliminarily by appointment by the state executive "from a list named by another agency, composed in part of high judicial officers and in part of other citizens, selected for the purpose, who hold no other office."

As to juror selection, Judge Medina "would insist upon a unanimous verdict in all cases, civil and criminal . . . would abolish Blue Ribbon juries", would improve the method of selection and the pay.

Harold R. Medina is a legal writer *par excellence,* and not only is this law review article very worthwhile, but also the volume containing his entire John Randolph Tucker lectures should be even more so.

TAXATION: In the November, 1954, issue of the *University of Pennsylvania Law Review* (Vol. 103–No. 2, pages 168–207), Donald McDonald, a member of the Bars of Pennsylvania and Nebraska, discusses the question of "Deduction of Attorney's Fees for Federal Income Tax Purposes". As Mr. McDonald points out a client may very well ask as you hand him a bill for services rendered, "Can I deduct this when figuring my income tax?" In addition the matter should be foremost in the attorney's mind, since if it is deductible and you tell the client, you are not only being the complete lawyer, but also soften the impact of the bill. This latter is especially important in the case of individual clients. Speaking personally, one of my few achievements as a lawyer was to let the wife in a marital settlement pay my fee and subsequently deduct it from her income tax and it worked well, just as Mr. McDonald says. The article is quite thorough and well organized. It presents the general principles involved followed by an item by item consideration of what can be deducted and what cannot. (For copies write to the University of Pennsylvania Law Review, 3400 Chestnut Street, Philadelphia 4, Pennsylvania. The price is $1.75 per copy.)

Department of Legislation

Charles B. Nutting, Editor-in-Charge

Although this department places primary emphasis on legislative procedure and drafting, occasionally a substantive matter merits consideration. This is true in relation to the poor laws, where Professor Mandelker's research reveals the need for thorough re-examination and revision.

The American Poor Laws: A Legislative Backwater

by Daniel R. Mandelker, Assistant Professor of Law, Indiana University

As the noted historian, R. H. Tawney, has written with reference to the poor laws, " . . . there is no touchstone, except the treatment of childhood, which reveals the true character of a social philosophy more clearly than the spirit in which it regards the misfortunes of those of its members who fall by the way." However, with billions spent by local, state and federal governments each year on over 5,000,000 persons receiving some form of public assistance, the general assistance or poor laws still remain a little known and little understood legislative backwater. Yet, the consequences of public indifference appear all the more serious since the general assistance statutes, in many respects, are out of tune with contemporary democratic institutions.

Any attempt to write or communicate on this problem is difficult because even the function of general assistance appears to be a mystery to many people. Chiefly in the last two decades, many statutory programs have been adopted with the aim of affording some security against some of the common risks of an industrial society. Workmen's compensation laws were first adopted to compensate workmen for injuries received in the course of their employment.[1] With the help of federal grants-in-aid, the states have also established programs of categorical public assistance to the needy blind, aged and disabled, and to dependent children of families in which the father is dead, absent or incapacitated. Unemployment compensation seeks to protect workers against the hardships of temporary job lay-offs, and Federal Old Age and Survivors Insurance provides a form of security against retirement.

Despite all these attempts to provide against the contingencies that bring about economic need, the old poor laws are still with us. Their function must be defined negatively. Individuals who are not covered by one of the programs of social insurance or categorical assistance, or who are not adequately provided for under these programs,[2] or whose benefits under these programs have expired, must rely for subsistence wholly or in part on the aid provided by general assistance. For this reason, this program remains the last real bulwark against unemployment produced by a prolonged depression. Today, about 300,000 persons and families are dependent on the poor laws for their support.

Unlike the programs of categorical assistance, however, no federal grants-in-aid are made available for general assistance. This program, which is usually administered at the municipal or county level, is entirely the creature of state statute.

In their basic outline, American poor laws vary amazingly little from their English prototype of 1601, from which they were derived. As was the case under the English statute, eligibility for general assistance is based on an economic need test. In addition, the applicant for public aid must usually have settlement, or residence, in the locality in which he is applying for help. Members of the applicant's immediate (and sometimes remote) family are usually made primarily or equally liable for any assistance that is granted, and the recipient of aid in many states is also liable to make restitution of what he has received in the event he is ultimately able to do so. Often there are special provisions containing civil and criminal penalties for any fraud committed by applicants or recipients in connection with the assistance program.

While a simple recitation of these provisions does not make them appear unduly severe, their cumulative effect, and a certain harshness which has been a part of poor law administration since its inception in this country, combine to make the lot of the individual in need of assistance an unhappy one.

The settlement requirement may be taken as one example. Most settlement laws contain a residence requirement of at least one year and many require more than this. The length of the residence period, together with the fact that residence must be acquired in most states on a local county or township basis, and cannot be acquired during the period public aid is received, often makes it difficult for the average working family, which tends more and more to be migrant, to get a settlement. If the community in which the individual applies for assistance turns out not to be his place of settlement, his only alternative usually is to search out his settlement and seek relief there. There are laws in most states making it a duty of the locality to assist nonresidents as well as residents, but they are ignored as a practical matter in many instances.

Pulling up roots, however, may not always be an easy thing to do. And in some cases one's settlement may turn up where it is quite unex-

1. New York and a few other states also have statutory non-occupational accident and disability programs.

2. In some areas, however, grants received under other assistance and insurance programs may not be supplemented by general assistance.

pected. There are many technicalities in the law, and a young widow with children, for example, may suddenly find that she has settlement only in the distant and strange community of her husband's birth, a place where she may never have resided.

But the lot of the non-settled person in need may be even worse in some jurisdictions. Some states still have in their statutes the English Settlement Law of 1662, which authorizes the compulsory removal to the place of his settlement of any individual who does not have settlement in the town where he applies for relief. That persons may be forced to move against their will seems shocking in the twentieth century, and there is some evidence that the judicial process under which compulsory removal orders may be obtained has fallen somewhat into disuse. However, the experience of the recent depression indicated that relief officials are not averse to "dumping" all nonsettled persons they find in need of relief on a near or distant locality. The reports have yielded a decision, handed down only ten years ago, involving a helpless farm family forcibly removed from their home in sub-zero weather and dumped in a farm yard in a neighboring locality.

But it is in the administration of these statutes that their unnecessary severity seems most evident. There are a substantial number of states in which general assistance, like the categorical assistance programs, is administered by county welfare departments under the supervision of the state department of welfare. Where this is the case, the result has usually been improved methods of administration and utilization of better-trained personnel to administer the program.

Unfortunately, as a carry-over from the early English plan, local, unsupervised administration of general assistance is still the rule. This results in the placing of the program in the hands of unskilled political officeholders, who are not trained to carry out this function. They can make the receipt of assistance unpleasant in many ways. For example, few of the statutes contain any restriction on the method in which poor relief is to be paid, and the practice of making payments in kind instead of in cash was still found to be quite general in one recent survey. The humiliating consequences of being deprived of the power of choice that this system entails must be felt to be appreciated.

In many areas the policy is to deny general relief to anyone who can work, and several statutes so provide. If this policy were followed in times of serious economic dislocation, able-bodied persons, out of work in substantial numbers due to no fault of their own, would be denied aid. In addition, relief officials were found to deny aid to anybody who turned down an available job, whether this was required by statute, as in several states, or not. There can be no objection to this requirement as such, but where relief officials take an unrealistic view of what an applicant is able to do, he may as a practical matter be denied both a livelihood and public aid. In some areas the "work test" is used as a means of keeping many Negro applicants from receiving relief.

This brief review has pointed up only some of the anachronisms and inequities that inhere in the present patchwork of general assistance legislation. Not the least of these is the considerable variation in the quality of the program and in the level of assistance grants, not only from state to state but from community to community within a particular state. This is a consequence of placing the administration of the program in the hands of so many units of local government. The continued reliance on the New England town, and on townships in some states, as the administrative unit for general assistance, has led one authority to estimate that there are still 10,000 political units concerned with the administration of poor relief in this country.

What would seem to be needed is a wholesale revision and revaluation of the general assistance laws in the light of modern attitudes. Some states, indeed have overhauled their general assistance statutes with noticeably beneficial results. In New York, for example, settlement in the state is all that is needed. In that state too, by statute, the payment of assistance in cash rather than in kind seems to be the general rule.

Throughout most of the country, however, the trend seems to be the other way. Due apparently to burgeoning welfare costs, there is a strong movement, much like that which took hold of England in the early nineteenth century, to reduce the number of persons depending on public assistance for their support. The movement has been felt most by the general assistance laws, unprotected as they are by any minimum requirements imposed by federal statute as a prerequisite to grants-in-aid.

What seems to have happened is that the unpenitent, sturdy, fraud-minded beggar has been conjured up to stalk the land. Several state legislatures in recent years have amended their general assistance statutes to elaborate the penalties for client fraud, to broaden the base of family responsibility and to find new methods for enforcing it, and to open the public assistance rolls for public inspection. Behind this new legislation there appears to be the feeling that usually persons who need public assistance are somehow personally deficient and personally responsible. Hence, these people must be deterred from applying for help by making public assistance as unpleasant as possible.

It is not denied that the problem of welfare costs is a staggering one, nor that there are persons who will use fraud to get public assistance. What the solution to these problems should be will take a considerable amount of serious thought, and the acquisition of more knowledge about the way people act. There are no easy answers. In the meantime, it seems a mistake to revert to the theory that poverty is based on personal fault.

Actually, this country has never

solved its public assistance problem. When the depression came in 1932 the poor laws were the only system of public relief available. Funds available under these programs proved inadequate to meet the need, and federal help was inevitable. Federal help was only temporary, and terminated once certain categories of individuals, such as the aged and the blind, were singled out for separate and more adequate treatment under programs for which the Federal Government shared the expense.

Even today, however, general assistance cannot meet all of the economic need that is dependent on it. In particular, the needs of families and individuals for public aid for medical expenditures is staggering and continues to become more so, with the continuing increase in medical costs. What will happen in the case of another prolonged depression that ultimately may involve the exhaustion of unemployment benefits can only be conjectured. In the meantime, the nation must rely, for the underpinning of its entire welfare structure, on a statutory framework that dates back three-and-a-half centuries, and that carries with it all the earmarks of an earlier and less compassionate age.

The Selection of Judges

(Continued from page 510)

States. Justice Blatchford of the United States Supreme Court died. The President nominated William B. Hornblower of New York. That appointment displeased Senator Hill. So the nomination was rejected by the Senate. The President then nominated Wheeler H. Peckham. Senator Hill contested that nomination, too, and succeeded in defeating it. Three days later the President nominated United States Senator Edward Douglass White of Louisiana. The Senate promptly and unanimously accepted that nomination. For twenty-seven years he served on the Court with distinction, during ten of those years as Chief Justice. It is not important whether the President or the Senate won that battle of a bygone day. The importance is that President Cleveland there set a pattern which for the last sixteen years has been followed by our Chief Executives, either wittingly or unwittingly, in their appointments to our highest tribunal and thus impeding and embarrassing the Senate in its constitutional power and duty of advising and consenting to the appointment of justices to the Supreme Court.

The pattern is that of appointing to the highest court either Senators or men holding offices for which they had been confirmed by the Senate.

With the exception of the present Chief Justice, every appointee (except perhaps one) to the Court since 1937 was at the time of his appointment either a United States Senator, or holding an office for which he had been confirmed by the Senate. Whether such nominations are planned to obviate or discourage controversies in the Senate over confirmation, we of course do not know. But we do know that they have had that effect. Since the Cleveland-Hill struggle of 1894, there has been only one rejection by the Senate of a Presidential appointment to the Supreme Court, and very few instances in which there was any prolonged discussion or debate over any appointment.

For the past sixteen years at least, it appears that the Senate of the United States has made little use of its constitutional power to advise with and consent to appointments of Supreme Court Justices. It was not ever thus—not even when a Chief Executive sought to place members of his cabinet on the Supreme Court. There were days when the Senate considered it not only its right but its duty to participate equally with the President in choosing justices of the Supreme Court, and thus have some voice in the selection of those who ultimately have the decision as to whether constitutional government shall prevail in this nation.

No man sits on the Supreme Court today without the approval of a majority of the Senate, present and voting, when his nomination came before the Senate. The Senators have the constitutional power, and the correlative duty to "advise and consent" as to any nomination which is placed before them. That they have not recently exercised that power and duty is one of the reasons why there is being considered and discussed the question: Under present conditions, should not the constitutional method of selecting federal judges be changed?

As was ever so in this nation of ours, there are men and women who are willing to face the facts, and discuss them.

With respect to judges of the courts of appeals, and district judges, the pattern is not so clear as it applies to "nominations" and "appointments". But—when it comes to "advising and consenting," let us assume that State X has two Senators of the party in power. A district judge dies or resigns. The two Senators from State X agree on his successor. The Attorney General "investigates" him and recommends his appointment. He is appointed and confirmed. If perchange the Attorney General investigated and refused to recommend his appointment, there would come a clash. Until someone gave in, the State of X

would be without a judge.

If the State of X should have had two Senators not of the party in power, then the "advice and consent" provision of the Constitution generally ceases to have any effect, and the Attorney General "investigates" and "recommends."

In this situation, therefore, ought we not as men, whether judges or lawyers, be willing to admit that the present system is faulty, and face the questions: What method will be most conducive to the maintenance of a thoroughly qualified and independent federal judiciary?

Are safeguards needed to insure the permanence of an independent judiciary?

With respect to state court judges, the American Bar Association plan contemplates that the appointing power is vested in the governor. In order to secure the best choice of names the executive does not have an unlimited power of selection, but is confined to a panel of names chosen by a separate nominating agency. The nominating agency is not composed solely of lawyers and judges but consists equally if not predominantly of laymen elected by the voters or appointed by the governor, and serving without pay. It has been suggested that there be a national judicial council composed of judges, lawyers and laymen who would make nominations of more than one for the position. From this list the President would nominate, subject to the consent of the Senate.

A few weeks ago I was discussing this subject with a group of interested lawyers. It was suggested that I draft such a proposed amendment so that the lawyers who were interested could have the benefit of it, criticize it and make suggestions with respect to it—that it would serve as something concrete to discuss and criticize rather than to have a discussion of an abstract idea.

So, I undertook the task, and the proposed amendment might read as follows:

Section 1. There shall be a Judicial Council of the United States.

Section 2. The Judicial Council of the United States shall be composed of seventeen citizens of the United States, eleven of whom shall be attorneys at law who shall have been admitted to practice in the Supreme Court of the United States, and none of whom shall be officers or employees of the United States.

Section 3. The members of the Judicial Council shall be nominated by the President of the United States, and appointed by him by and with the advice and consent of the Senate.

Section 4. The term of office of each member of the Judicial Council of the United States shall be fifteen years. and no member shall be eligible to serve upon said council after the expiration of the term for which he was appointed. All vacancies on the said council shall be filled by nomination and appointment of the President by and with the advice and consent of the Senate, and such member so appointed shall hold office for a full term of fifteen years from the date of his appointment.

Section 5. The members of the Judicial Council shall, at stated times, receive for their services a compensation to be determined by law by the Congress of the United States which shall not be diminished during their continuance in office.

Section 6. The duty of the Judicial Council of the United States shall be to recommend to the President of the United States, persons for nomination and appointment by him as Justices of the Supreme Court of the United States and as such inferior Courts as the Congress may have ordained and established or may hereafter ordain and establish.

Section 7. No person shall be nominated or appointed by the President of the United States as a Justice of the Supreme Court, or as a Judge of any inferior Court unless he shall have been recommended for such nomination and appointment by a majority of the members of the Judicial Council of the United States then in office.

Section 8. No member of the Judicial Council of the United States shall be eligible for appointment as a Justice of the Supreme Court of the United States or as a Judge of an inferior Court nor for a period of three years after he has ceased to be such member whether such cessation ensued by expiration of his term or by resignation or otherwise.

Section 9. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

If the idea of a national judicial council should not be considered as a solution to our problem, there is another approach which might be considered.

The Constitution of the United States, in dealing with the *legislative* department, provides specifically: "Each house shall be the judge of the elections, returns and qualifications of its own members. . . ." (Article I, Section 5, Clause 1.)

Thus, the utter independence of the Congress of the United States is safeguarded. The jurisdiction to determine the right of a Senator or a member of the House of Representatives to a seat is vested exclusively in the Senate or the House respectively. The Court of Appeals of the Fifth Circuit has decided in the case of *Johnson* v. *Stevenson,* 170 F. 2d 108, that it is the constitutional right of the Senate to judge the election of a Senator in all its steps or stages.

The legislative bodies are the sole judges of the elections, returns and qualifications of their members. There is no reason why the federal judiciary should not be a sole judge of the qualification and selection of its own members, and thus to create a real independent judiciary dependent upon the whims, foibles, personal predilections of no one but upon the calm deliberate judgment of

other members of the federal judiciary.

I have some very definite ideas as to the details of a plan, but time here certainly would not permit the mention or discussion of them.

I do think it appropriate to say that in my opinion the selection should be different with respect to Justices of the Supreme Court as distinguished from Judges of the Courts of Appeals and District Judges.

So far as the Supreme Court of the United States is concerned, I venture the suggestion that no man should sit as a Justice on the Supreme Court of the United States who has not had prior experience on the federal bench or as a justice of a state court of last resort. The selection of Justices of the Supreme Court might be confined to a selection from judges of the eleven Circuit Courts of Appeals, and state supreme court justices.

Presently, there are sixty-two judges of the eleven courts of appeals. I would say that there were about three hundred justices of state courts of last resort. I should like to see the passage of a constitutional amendment which would provide that in the event of a vacancy on the Supreme Court of the United States, that it must be filled by a selection from these judges and justices. It could be that the selection should be made by the remaining justices of the Supreme Court selecting a panel of three and the Senate selecting by election, one from that panel, or vetoing all three of them. Those are matters of detail. The underlying principle of the suggestion is that no man should be permitted to serve as a Justice of the Supreme Court of the United States without having had prior experience as an appellate judge or justice.

So far as court of appeals judges are concerned, I suggest that in the event of a vacancy on a court of appeals, that that vacancy be filled by the remaining members of the court of appeals either from the district judges or from members of the Bar. After forty years of practice, it is my firm conviction that judges are capable of selecting the best judges.

So far as district court judges are concerned, I suggest that if a vacancy should occur, say in Louisiana, that that vacancy should be filled by a selection made by the judges of the Court of Appeals of the Fifth Circuit in conjunction with the remaining district judges in the State of Louisiana.

Our Constitution was intended to insure *judicial independence*. If it does not—if there is the slightest doubt about its doing so—it should be changed so as to assure absolute judicial independence.

1954 Estate and Gift Tax Provisions

(Continued from page 537)

(2) will, to the extent not so expended,

(a) pass to the donee within a period no longer than ten years after attaining the age of 21 years and

(b) in the event the donee dies before attaining the age of 21 years or within a period no longer than ten years after attaining the age of 21 years, be payable to the estate of the donee or as he may appoint under a general power of appointment.

With such an amendment to the law, the donee and the value of the gift in each case, whether the gift be to an adult or to a minor, would be fixed.

The new law also provides, with respect to the $3,000 annual exclusion, that where the present interest in the property transferred may be diminished by the exercise of a power, such possibility shall be disregarded if no part of such interest will at any time pass to any other person. This provision eliminates the problem created by certain court decisions which have indicated that although a gift may be made in trust of the present right to receive income, if the power is given to the trustee, in his uncontrolled discretion, to pay over the trust principal to the income beneficiary, the income interest is not susceptible to determination and, therefore, must be treated as a gift of a future interest. An example of this would be where the trustee has power to pay over the entire trust principal to the income beneficiary. In such case the right of the income beneficiary to receive the income may be terminated, but no other person has the right to such income interest.

C. *Revaluation of Gifts for Prior Years* (Section 2504). Under the old Code the gift tax liability for one year was often dependent on the value of the gifts made in prior years.

The new law provides that the value of a gift as reported will be conclusive in determining the tax rate to be applied to subsequent gifts, after the statute of limitations has run.

The reason for the new provision lies in the fact that once the value of a gift has been accepted for tax purposes by both the government and the taxpayer, the value should be acceptable to both in measuring the tax to be applied to later gifts. The new provision prevents reopening of the question of the value of the gifts in prior years once the statute of limitations has run on such prior years.

D. *Tenancies by the Entirety* (Section 2515). Under the old law the creation of a joint tenancy or a tenancy by the entirety could result in a gift from one spouse to the other and the termination of the tenancy could also constitute a gift.

In contrast, the new law provides that unless the spouse who furnishes the major part of the consideration elects otherwise, a transfer of real property to a joint tenancy, where there is a right to survivorship, or to a tenancy by the entirety, is not a taxable gift. When such a tenancy is terminated, there will, however, be a gift at that time to the extent that the proceeds are returned other than in proportion to the consideration

furnished by each spouse.

The new provision removes a pitfall and prevents the government from asserting a gift tax liability where, for example, a couple has bought a home and take title as tenants by the entirety, or as joint tenants with right of survivorship, without any intention on the part of either husband or wife to make a taxable gift. The election upon the part of the spouse who furnished the major part of the consideration to treat the transfer of the real property as a gift must be made on a gift tax return, regardless of the fact that the value of the property which is the subject of the gift may not exceed the $3,000 exclusion. The return must be filed by the donor within the time prescribed by law for the calendar year in which the tenancy was created. The new provision makes it possible for a couple to acquire income-producing real estate and have the income passed to the donee spouse free of both gift and estate tax, since the provision applies to any "real property", not merely to the "home".

E. *Property Settlements Incident to Divorce* (Section 2516). Under the provisions of the old law, such settlement was not regarded as a taxable gift if the property settlement was incorporated in the decree of divorce.

The new law provides that property settlements do not result in taxable gifts if they are made pursuant to a written agreement and are followed by a divorce within two years.

F. *Marital Deduction* (Section 2523). In order to correlate the gift tax with the estate tax, transfers to a spouse of a legal life estate, coupled with a general power of appointment, are, under the new Code, made eligible for marital deduction under the gift tax.

G. *Conclusions.* As in the case of the estate tax, the gift tax provisions of the new law represent a considerable improvement in the tax law. A number of uncertainties, particularly with respect to gifts to minors, have been eliminated. Unintended gifts, in the case of tenancies by the entirety and property settlements incident to divorce, have been eliminated from the tax, and the inequity which has in some cases arisen in the case of revaluation of gifts in prior years has also been remedied under the new law. All in all, the new law represents a considerable improvement. Like all tax laws, however, new changes call for later revisions as loopholes and inequities appear. Certainly the Internal Revenue Code of 1954 will not be the "last word" on our federal estate and gift taxes.

Mississippi Estate Planning Council

The Estate Planning Council of Mississippi, which was organized a little over a year ago for the purpose of keeping its members up to date on new developments in the field of estate planning, has completed its first year of organization with a membership of ninety-five. It is composed of lawyers, life insurance underwriters, certified public accountants and trust officers of banks. The officers of the Council are Warren V. Ludlam, Jr., attorney, President; J. W. Cocke, certified public accountant, Vice President; E. J. Barber, trust officer, Secretary-Treasurer, all of Jackson. The members of the Executive Committee are the above officers and W. C. Hester, commcercial life underwriter, of Jackson, and M. D. Brett, trust officer, of Clarksdale, Mississippi.

BAR ACTIVITIES

Paul B. DeWitt • Editor-in-Charge

David O. JACKSON

■ The Fellowship of the Association of the Bar of the City of New York has been awarded to Alex. C. Hoagland, Jr., of Elizabeth, New Jersey, and David C. Jackson, of Newcastle-on-Tyne, England.

The Fellowship is an annual award to an outstanding law school graduate who will work on various projects and reports developed by committees of the Association.

Alex C. HOAGLAND

Mr. Hoagland will be graduated in June from the Harvard Law School. He is a graduate, *cum laude*, of Harvard College and has engaged in newspaper work. He is Head Proctor and Member of the Board of Freshmen Advisers of Harvard College.

Mr. Jackson graduated in law from Brasenose College, Oxford University, with first-class honors. He was President of the College Law Society and is presently Bigelow Teaching Fellow at the University of Chicago.

■ The Executive Council of the International Bar Association has elected Loyd Wright, of Los Angeles, President of the American Bar Association, as Speaker of the House of Deputies and Chairman of the Executive Council—the chief executive office of the International Bar Association.

At the invitation of the Norwegian Bar Association, the Council voted to hold the Sixth International Conference of the Legal Profession under the auspices of the International Bar Association in Oslo, Norway, during the week of July 23-28, 1956. The Council also considered the agenda for the Sixth Conference and elected to membership the Danish Law Society.

The Executive Council met at the House of The Association of the Bar of the City of New York. The International Bar Association is a federation of the national bar associations of practically all the nations outside the Iron Curtain. Its membership comprises fifty-eight associations from forty-eight countries. The following councillors were present, in person or by proxy:

Loyd Wright, in the chair;

W. H. Cunningham, of New Zealand, represented by the Hon. Sir Leslie Knox Munro, New Zealand Ambassador to Washington, and Permanent Representative of the New Zealand Delegation to the United Nations;

Richard O'Sullivan, of the General Council of the Bar of England and Wales;

Thomas G. Lund, Treasurer of the International Bar Association and Secretary of The Law Society of England;

Pierre Lepaulle, of Paris, of the Association Nationale des Avocats, of France;

Dr. Edward von Saher, Chairman of the Program Committee, representing the Netherlands Bar Association;

Robert G. Storey of Dallas, Texas, past President of the American Bar Association and Dean of the Southern Methodist University Law School;

Gerald J. McMahon, of New York, Acting Secretary-General of the International Bar Association;

Adolf Hamburger, representing the German Bar Associations;

Rolf Christopherson, Secretary of the Norwegian Bar Association;

Walter Oppenhoff of the Deutscher Anwaltverein, of Germany;

Roberto Reyes Morales, of Madrid, Spain, of the Spanish Bar Association;

Mohammad Siddiq of The High Court Bar Association, Lahore, Pakistan;

Hans L. F. Meyer, of Switzerland;

Mohammed Adham of the Iraq Bar Association.

Also among those present were:

Whitney R. Harris, of Chicago, Executive Director of the American Bar Association;

William Roy Vallance, of Washington, D. C., Secretary-General of the Inter-American Bar Association;

Paul B. DeWitt of New York, Assistant Treasurer of the International Bar Association, and Executive Secretary of The Association of the Bar of the City of New York;

Robert N. Anderson, of Washington, D. C., Chairman of the Membership Committee;

Amos J. Peaslee, Jr., of New York, Assistant Secretary of the Program Committee.

■ In April the Federal Bar Association of New York, New Jersey and Connecticut sponsored a symposium on Marriage and Divorce Law. The Association's Special Committee on Marriage and Divorce Law, of which David Von G. Albrecht is Chairman, arranged the symposium. The speakers were: J. T. Berman, of the Alabama Bar; W. Cecil Grant, of the Florida Bar; Clifford Jones, of the Nevada Bar, and Eustace V. Dench, of the Virgin Islands Bar.

■ The Southwestern Legal Foundation and Southern Methodist University School of Law held the Fifth

Annual Lawyers Week in April at the Southwestern Legal Center in Dallas, in cooperation with the State Bar of Texas, the State Bar of New Mexico, the Arkansas Bar Association, Oklahoma Bar Association, Louisiana State Bar Association, Dallas Bar Association and other interested groups.

Atomic energy was the subject of a conference presided over by Gerald C. Mann, Former Attorney General of Texas, and George G. McGhee, former Ambassador to Turkey. The speakers were Frank Norton, Chairman of the Atomic Energy Committee of the Dallas Bar Association; William G. Waldeck Bryant, member of the Atomic Energy Committee of the Mineral Law Section of the American Bar Association; William Mitchell, General Counsel of the Atomic Energy Commission; Allan Shivers, Governor of Texas; and Gordon Dean, former Chairman of the Atomic Energy Commission. George L. McGregor, President of the Texas Utilities Company was the Moderator.

The conference on religion, morality and law was presided over by Dwight L. Simmons, of Dallas, and the speakers were Robert E. Fitch, Dean of the Pacific School of Religion, Berkeley, California; Arthur L. Harding, Professor of Law at Southern Methodist University; Wilber G. Katz, Professor of Law at University of Chicago, and Joseph D. Quillian, Professor of Homiletics at Southern Methodist University.

W. A. Morris, Presiding Judge of the Court of Criminal Appeals, Austin, presided at the conference on the administration of criminal justice. Loyd Wright, President of the American Bar Association, spoke on "Responsibility of the Legal Profession in the Administration of Criminal Justice"; Ben Shepperd, Attorney General of Texas spoke on "The Attorney Generals' Conference on Law Enforcement: Its Purpose and Future"; Henry Wade, District Attorney of Dallas County, spoke on "Local Law Enforcement Problems"; General William J. Donovan, Chairman of the American Bar Association's Committee on the Administration of Criminal Justice, spoke on "The American Bar Research Project"; and Dr. Eduardo Salazar Gomez, Quito, Ecuador, Chairman of the Executive Committee, Inter-American Bar Association, spoke on "Criminal Law and our Inter-American Relations".

At a panel discussion on "State Bar Activities in the Administration of Criminal Justice" R. N. Gresham, President of the State Bar of Texas, presided, and the following speakers took part: J. M. Smallwood, President, Arkansas Bar Association; Charles B. Duffy, President, Oklahoma Bar Association; Thomas W. Leigh, President, Louisiana State Bar Association, and Howard F. Houk, President, State Bar of New Mexico.

"Problems and Reforms in the Southwest" was the subject of a panel discussion at which Fred S. LeBlanc, Attorney General of Louisiana presided. The speakers were: Mac Q. Williamson, Attorney General of Oklahoma; Richard H. Robinson, Attorney General of New Mexico; Ben Shepherd, Attorney General of Texas, and T. J. Gentry, Attorney General of Arkansas.

■ In March, the Inter-American Bar Association honored its Honorary President, Dr. Eduardo J. Couture at a luncheon at the University Club in Washington, D.C. Dr. Couture is also Dean of the Law School of the University of Uruguay.

A large group of Washington lawyers were present to greet Dr. Couture who arrived at the luncheon with Dr. José A. Mora, Ambassador of Uruguay to the United States and Chairman of the Council of the Organization of American States.

Dr. Couture was introduced by Frank J. Kelly, member of the Council of the Inter-American Bar Association.

Dr. Couture had been in the United States for the last eight weeks lecturing on Civil Procedure at Tulane University School of Law in New Orleans. He has also lectured at the Southwestern Legal Foundation in Dallas, at Miami University School of Law and at New York University Law School.

Many District of Columbia lawyers who attended the Seventh Conference of the Inter-American Bar Association in Montevideo, Uruguay, in November, 1951, were present at this luncheon and recalled the hospitality they received at that time from the Uruguayan lawyers under the Presidency of Dr. Couture who organized one of the most successful conferences of that Association.

■ "Point of Law," a Monday-through-Saturday five-minute radio show sponsored by the Wells Fargo Bank in collaboration with the Bar Association of San Francisco, has been awarded the George Washington Medal of Honor by the Freedoms Foundation at Valley Forge. The Association has also been asked to permit the show to be transmitted by the Armed Forces Radio Service over its world-wide short wave facilities. The program was originated by Michel Lipman, a San Francisco lawyer, and his wife. It presents a common legal situation each day in terms of human interest. The arguments of lawyers for each side are given, followed by the court's actual decision. The program has also received the endorsement of the Los Angeles Bar Association and is sponsored in Los Angeles by the Citizens National Trust and Savings Bank. Bar associations can borrow audition records of the program from Steffner Productions, 6223 Selma Avenue, Hollywood.

■ In a recent survey conducted by Teachers College, Columbia University, of the will-making habits of Columbia alumni it was revealed that more than one fourth of the lawyers who replied were without wills. The survey indicated one half of the professional men and women of the United States have no wills. Nearly 22,000 of the 45,000 persons who answered the survey said they were intestate. Pharmacists topped the list of professional persons who

showed the least interest in making wills, and journalists ran a close second. Nearly one-half the teachers had no wills. The survey was conducted by Teachers College as part of the study of the gift and bequest preferences of college graduates in conjunction with the college's fund-raising program.

The study is believed the largest of its kind ever attempted. One out of every twenty-five persons who answered the question of why he did not have a will gave as his reason that he did not know where or how to have a will prepared. Many feared possible high legal fees for drafting a will, apparently unaware that the fees for this service are usually nominal. So widespread is the lack of information on the subject that a broad program of education is needed, Teachers College authorities believe. The College is now considering means of supplying basic information to all Teachers College alumni on the importance of having a will.

■ Allen T. Klots, President of The Association of the Bar of the City of New York, announced the appointment of the following committee of the Association which will conduct a definitive study of the federal loyalty-security program:

Dudley B. Bonsal, New York, *Chairman,* Richard Bentley, Chicago, Henry J. Friendly and Harold M. Kennedy, New York, Monte M. Lemann, New Orleans, John O'Melveny, Los Angeles, George Roberts and Whitney North Seymour, New York. Additions to the committee are expected to be made.

As previously announced, this study is made possible by a grant from The Fund for the Republic, Inc. The study will be carried out by the Association through its committee, which will have full responsibility for the conduct of the study and for any recommendations which may result therefrom.

Mr. Bonsal has stated that the committee was presently engaged in the selection of a research staff, the composition of which will be announced at a later date. The committee expects to review the present federal loyalty-security program with the appropriate government departments and congressional committees, and will also seek the advice and assistance of other interested individuals and groups.

Mr. Klots said, in connection with announcing the appointment of the committee, "The legal profession is here presented with an important opportunity to conduct a professional non-partisan study of the federal loyalty-security program. The study will be conducted in full recognition of the paramount need of national security and at the same time the importance of preserving the traditional rights of the individual citizen."

It is contemplated that the study will take six months to a year to complete, and that the committee will issue progress reports from time to time.

(Continued on page 576)

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